

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

VOXER, INC. and VOXER IP LLC, ) AU:20-CV-00655-LY  
)  
Plaintiffs, )  
)  
v. ) AUSTIN, TEXAS  
)  
META PLATFORMS, INC., f/k/a )  
FACEBOOK, INC., and INSTAGRAM LLC, )  
)  
Defendants. ) SEPTEMBER 13, 2022

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TRANSCRIPT OF JURY TRIAL

VOLUME 2

BEFORE THE HONORABLE LEE YEAKEL

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Proceedings recorded by computerized stenography, transcript  
produced by computer.

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14:16:22 1 (Open court, no jury)

14:16:22 2 THE COURT: Couple of quick notes before we get  
14:16:23 3 started with opening statements. Back to what we talked about  
14:16:27 4 yesterday afternoon, Meta is going to reply to the brief that  
14:16:30 5 was filed by Voxer; is that right?

14:16:32 6 MR. JONES: That's right, Your Honor.

14:16:33 7 THE COURT: About when?

08:39:05 8 MR. JONES: Nine o'clock tomorrow morning, if that's  
08:59:57 9 convenient for the Court.

09:04:44 10 THE COURT: That's fine. I'm going to grant Voxer's  
09:04:47 11 motion on, for want of a better word, logistically how we're  
09:04:57 12 handling this with the redacted copy and what can be used.  
09:05:01 13 Basically, the original sealed, and the redacted copy of the  
09:05:07 14 motion will be what's in the file.

09:05:08 15 MR. POWELL: Thank you, Your Honor. Plaintiff would  
09:05:09 16 request, then, permission to recall Mr. Katis after his direct  
09:05:17 17 examination today, because the issues in this motion are for  
09:05:19 18 his testimony, and he's our first witness.

09:05:22 19 THE COURT: No. As I indicated yesterday, until we  
09:05:23 20 got through this part of it, I'm happy to juggle witnesses. So  
09:05:34 21 if I were to reconsider previous rulings, you'll be able to  
09:05:38 22 recall him as a witness.

09:05:39 23 MR. POWELL: Thank you very much, Your Honor.

09:05:43 24 THE COURT: So with that, are we ready to proceed  
09:05:45 25 this morning?

09:05:45 1 MR. STONE: We're ready to proceed, Your Honor.

09:05:48 2 MR. VAN NEST: We're ready, Your Honor.

09:05:52 3 THE COURT: All right. You may bring in the jury.

09:05:54 4 (Open court, jury present)

09:05:58 5 THE COURT: Good morning, ladies and gentlemen.

09:05:58 6 Please be seated.

09:05:58 7 Our first order of business today will be opening  
09:06:01 8 statements. So is the plaintiff ready to proceed with the  
09:06:06 9 plaintiff's opening statement?

09:06:07 10 MR. STONE: We are, Your Honor.

09:06:08 11 THE COURT: You may proceed.

09:06:09 12 **PLAINTIFF'S OPENING STATEMENT**

09:06:09 13 MR. STONE: Thank you, Your Honor. May it please the  
09:06:11 14 Court:

09:06:11 15 Good morning, ladies and gentlemen. I'm Robert  
09:06:14 16 Stone, one of the lawyers representing Voxer in this trial.  
09:06:58 17 And, together with my team, we're pleased to present Voxer's  
09:07:04 18 case against Facebook and Instagram to you. Now, we all know  
09:07:08 19 that jury service at times can be an inconvenience, but this  
09:07:11 20 dispute is very important to our client and we all greatly  
09:07:14 21 appreciate your time.

09:07:15 22 Now, you may hear this is a bit of a surprise, but we  
09:07:18 23 often hear that jurors actually enjoy themselves, learning how  
09:07:23 24 our system works and being involved in resolving patent cases.  
09:07:27 25 And while I can't promise that everything will be as



09:07:32 1 entertaining as the Texas-Alabama game was this past weekend,  
09:07:40 2 at least up until the last field goal, I can promise you that  
09:07:43 3 we will be respectful of your time.

09:07:45 4 Now, what I'm going to do this morning is give you a  
09:07:49 5 road map for what the evidence in this case will show, and that  
09:07:52 6 evidence is going to come in the form of documents and witness  
09:07:56 7 testimony, both live and recorded. And at the end of the trial  
09:08:00 8 we will have a chance to speak to you directly again, and we  
09:08:04 9 will show you how the evidence tracked our road map.

09:08:06 10 Now, after you hear from all the witnesses over the  
09:08:08 11 course of the next several days, Voxer is confident that you  
09:08:08 12 will find that Facebook and Instagram, through their Facebook  
09:08:10 13 and Instagram Live video messaging services, infringed the two  
09:08:17 14 patents that Voxer has asserted. And we believe that you will  
09:08:20 15 also find that Voxer is entitled to damages for that  
09:08:23 16 infringement.

09:08:28 17 Now, ladies and gentlemen, let's get to the road map.  
09:08:33 18 This is a case about an idea that was born on the battlefield  
09:08:37 19 of Afghanistan following 9/11, and that led to the founding of  
09:08:40 20 a company, Voxer, by our client, Tom Katis, and the patents  
09:08:44 21 that are asserted here.

09:08:45 22 Now, let me tell you a little bit about Tom Katis.  
09:08:49 23 Like I mentioned, Mr. Katis founded Voxer in 2007. But before  
09:08:53 24 that Mr. Katis was already a successful entrepreneur and a  
09:08:58 25 decorated Green Beret. Now, you will hear that, after high

09:09:02 1 school, Mr. Katis enlisted in the Army, and it turns out that  
09:09:05 2 every Green Beret needs to have an area of expertise. And  
09:09:11 3 based on aptitude testing, Mr. Katis was trained to be a  
09:09:14 4 communications sergeant.

09:09:16 5 Now, a communications sergeant is someone who is  
09:09:19 6 responsible for everything that contains electronics on the  
09:09:23 7 battlefield. And you'll hear from Mr. Katis that the things he  
09:09:28 8 was responsible for included things like satellite  
09:09:32 9 communications and battlefield radios, the walkie-talkies that  
09:09:35 10 you might be familiar with.

09:09:38 11 Now, after his enlistment was up, Mr. Katis went to  
09:09:40 12 college, first a year at the University of North Carolina at  
09:09:43 13 Charlotte, and then he transferred to Yale University. Now,  
09:09:47 14 after graduating from Yale in 1994, Mr. Katis got a job in  
09:09:50 15 New York for Citicorp. And you'll hear how Mr. Katis was one  
09:09:53 16 of four people who founded the bank's Internet group.

09:09:57 17 Now, after serving as Citicorp's vice-president in  
09:09:59 18 charge of Internet payments for several years, Mr. Katis then  
09:10:00 19 joined an Internet startup, where he was vice-president of  
09:10:02 20 business development, until shortly before the 9/11 terrorist  
09:10:07 21 attacks.

09:10:09 22 Now, when 9/11 happened, you'll hear how Mr. Katis,  
09:10:13 23 like others who had served before, believed that his country  
09:10:17 24 needed well-trained soldiers to re-enlist. And, like many brave  
09:10:23 25 Americans, Mr. Katis did that, and he was deployed to

09:10:27 1 Afghanistan, where he was in Kunar Province. There he and his  
09:10:31 2 men were tasked with training Afghan special forces units,  
09:10:35 3 looking for Al Qaeda.

09:10:37 4 Now, you'll hear from Mr. Katis that the genesis for  
09:10:40 5 his thinking that led to Voxer, the plaintiff in this case,  
09:10:43 6 came during his time in Afghanistan, in particular, after this  
09:10:46 7 photo here which came following a particularly grueling ambush  
09:10:49 8 on January 15, 2003.

09:10:51 9 Now, on that day Mr. Katis was responsible for  
09:10:56 10 coordinating his unit's communications, as he always was. And  
09:11:00 11 even though the military had access to some of the best  
09:11:05 12 communication devices in the world, the \$15,000 radios that  
09:11:10 13 they were using in 2002 were essentially the same radios that  
09:11:16 14 Mr. Katis had used when he first enlisted more than a decade  
09:11:20 15 earlier. And those radios you'll hear have limited  
09:11:23 16 functionality.

09:11:24 17 Thinking about the ambush later where he had been  
09:11:26 18 trying to coordinate so many different things: his team,  
09:11:30 19 medevac, air support, quick-reaction forces, his commander,  
09:11:37 20 Mr. Katis realized that his radio, which had separate channels  
09:11:40 21 for communications that were all being broadcast  
09:11:42 22 simultaneously, didn't allow him to choose which ones to be  
09:11:46 23 live and which ones to deal with later.

09:11:48 24 If he changed the channel, the live broadcast would  
09:11:51 25 be lost. And his sense of frustration about this later had him

09:11:57 1 thinking that a two-way communications system that was both  
09:12:00 2 live and recorded, something that Mr. Katis referred to as  
09:12:04 3 "time-shifted," kind of like a DVR, where you might record  
09:12:08 4 something and go back and watch it later, but applied to  
09:12:11 5 two-way communications, would be a great improvement. And what  
09:12:16 6 he later found was that no such system existed. But I'll talk  
09:12:19 7 a little bit about that more in a minute.

09:12:24 8 Now, after Mr. Katis left the military and before he  
09:12:27 9 started Voxer, he founded a company called Triple Canopy, and  
09:12:31 10 that was a government contractor that provided high-threat  
09:12:34 11 security overseas. And you'll hear that Mr. Katis and his  
09:12:38 12 cofounder saw a need, in light of problems by companies such as  
09:12:41 13 Blackwater, for a more ethical security company. And you'll  
09:12:46 14 hear that after a number of years, that company that he and his  
09:12:49 15 cofounder started was very successful. And when it was sold,  
09:12:53 16 it had more than 11,000 employees and annual revenues of  
09:12:56 17 greater than \$1 billion.

09:12:59 18 Now, working with Triple Canopy introduced Katis to  
09:13:03 19 someone else who is going to be very important to what you're  
09:13:06 20 going to be hearing over the next few days, his cofounder of  
09:13:10 21 Voxer, Matt Ranney. Now Mr. Ranney's specialty was networking,  
09:13:14 22 and he was hired by Triple Canopy to help set up satellite  
09:13:18 23 computer networks across Iraq. Now, while working at Triple  
09:13:22 24 Canopy, Mr. Katis and Mr. Ranney talked about the frustration  
09:13:24 25 Mr. Katis had experienced with military radios, and the two of

09:13:29 1 them began a dialogue that would ultimately lead them to Voxer.  
09:13:32 2 Now, you'll hear from them that what they were  
09:13:36 3 looking for was a new hybrid communications system that could  
09:13:40 4 be both live and time-shifted at the same time. And what  
09:13:45 5 you'll hear from Mr. Katis is that, prior to Voxer, if you  
09:13:48 6 wanted to communicate with someone, you basically had two  
09:13:51 7 options: You could have a live communication, something like a  
09:13:55 8 telephone, or you could have a time-delayed communication,  
09:13:59 9 something like a text or e-mail.

09:14:01 10 And as we all know, for a phone call, you have to  
09:14:04 11 ring and interrupt someone, you have to set up the connection  
09:14:08 12 first, and then when the other side answers, you can talk. But  
09:14:12 13 if something is missed or the call is dropped, the  
09:14:14 14 communication is lost.

09:14:16 15 For e-mail, by contrast, you have to compose it  
09:14:20 16 before you send it, and then when you hit send, it gets  
09:14:24 17 delivered, but the communication isn't live. You have to wait  
09:14:27 18 for it to be sent. It is recorded, though.

09:14:31 19 Now what Voxer built was a hybrid of these two  
09:14:34 20 systems, a technology where you could be live without  
09:14:38 21 interrupting anyone, and the live communication could also be  
09:14:41 22 recorded so that it could be listened to or viewed later.  
09:14:49 23 Voxer would refer to this technology as "live messaging."

09:14:53 24 Now, you'll hear from Mr. Katis that he had his  
09:14:57 25 epiphany about how Voxer might offer this technology in the

09:14:59 1 fall of 2006. And you can see in the timeline there's a  
09:15:04 2 reference here to a white paper that Mr. Katis wrote at that  
09:15:07 3 time. And he went on to form Voxer in March of 2007.

09:15:13 4 And, from the beginning, Mr. Katis and Mr. Ranney  
09:15:16 5 believed that they had developed a revolutionary technology,  
09:15:20 6 and they wanted to patent it. And they did. They went to the  
09:15:23 7 patent office, and both Mr. Katis and Mr. Ranney have received  
09:15:27 8 more than 150 patents relating to live messaging technology.

09:15:32 9 Now, these are two of the patents, the two patents  
09:15:35 10 that are being asserted in this case, the '270 and the '557  
09:15:40 11 patent. And we'll talk about these in detail throughout the  
09:15:43 12 trial.

09:15:44 13 Now, before I start talking about patents in detail,  
09:15:48 14 I just wanted to briefly focus again on what is a patent. And  
09:15:51 15 I know you saw in the video yesterday that the court played,  
09:15:54 16 and that gives a good description, of course, about the laws.  
09:15:58 17 Now, our Founding Fathers believed that patent rights were so  
09:16:02 18 important that they wrote those rights into the first article  
09:16:04 19 of the Constitution. They wrote that Congress shall have the  
09:16:07 20 power to promote the progress of science by securing for  
09:16:10 21 limited times to inventors the exclusive rights to their  
09:16:14 22 discoveries.

09:16:17 23 Now, the patents at issue here, they only last for  
09:16:20 24 20 years, and after that the inventions are dedicated to the  
09:16:24 25 world. So that's the bargain that inventors make. If you

09:16:28 1 disclose your inventions to the world by publishing them in a  
09:16:32 2 patent, you get the right to prevent others from using those  
09:16:36 3 inventions for 20 years without your permission. And if  
09:16:39 4 someone does use your patent without permission, then you can  
09:16:42 5 come into court like Voxer has done here and seek damages for  
09:16:46 6 that use, something that we call "infringement."

09:16:48 7           So patents are like property rights protected by the  
09:16:52 8 Constitution. They're like a deed you would have to your land  
09:16:55 9 or to your home. And just like people aren't allowed to  
09:16:58 10 trespass on your property without permission, nobody can use  
09:17:02 11 someone else's patent, no matter how big the company is, no  
09:17:06 12 matter how powerful, without permission.

09:17:09 13           So let's look a little more closely at the two  
09:17:12 14 patents that are at issue here. Mr. Katis and Mr. Ranney and  
09:17:15 15 the other coinventors at Voxer did what they were supposed to  
09:17:18 16 do. They went to the patent office, they told the people there  
09:17:22 17 about their inventions, and the patent office then published  
09:17:26 18 those disclosures to the world.

09:17:28 19           And they did this first in what you're going to hear  
09:17:30 20 from Mr. Katis as a June of 2007 provisional patent  
09:17:34 21 application. And you'll hear from Mr. Katis and Mr. Ranney  
09:17:36 22 about what they were thinking back then. And, in particular,  
09:17:39 23 you'll hear about their vision which they describe here: To do  
09:17:42 24 for voice and video communications what e-mail, instant  
09:17:46 25 messaging, and devices like the Blackberry have done for

09:17:48 1 written correspondence. Users can send quick voice or video  
09:17:53 2 messages at the click of a button to any number of users  
09:17:58 3 without necessarily interrupting other conversations or waiting  
09:18:02 4 for acknowledgment.

09:18:05 5 And they also wanted to have a way of organizing and  
09:18:09 6 allowing people to handle those various conversations, a system  
09:18:12 7 for managing them. And you can see that's in the title of this  
09:18:16 8 document. And in point number one, they said we also want to  
09:18:20 9 develop a user interface to organize and prioritize current and  
09:18:24 10 past conversations, manage contacts and groups, and manage that  
09:18:30 11 user's interaction with the system.

09:18:32 12 Now, Voxer also filed for a second provisional patent  
09:18:35 13 application. You can see on the timeline that that happened in  
09:18:38 14 October of 2007, and that contained even more details,  
09:18:42 15 including the identification of certain target markets, such as  
09:18:47 16 public and social networks or media industries, including  
09:18:53 17 broadcasting.

09:18:53 18 Now, ultimately, the patent office evaluated Voxer's  
09:18:58 19 various applications, compared them to what had come before,  
09:19:01 20 and concluded that Mr. Katis and Mr. Ranney were entitled to  
09:19:04 21 patents, including the two that we have here.

09:19:09 22 So focusing on those two patents, the first is what  
09:19:14 23 we call the '270 patent. And we use the last three numbers of  
09:19:18 24 the patent. Even though you can see the longer number is  
09:19:22 25 10,142,270, we'll just be referring to it during the trial as



09:19:27 1 the '270 patent. And you can see Mr. Katis and Mr. Ranney are  
09:19:31 2 named inventors on that patent, along with two of their  
09:19:34 3 coinventors from Voxer.

09:19:36 4 Now, that patent is assigned to a company called  
09:19:39 5 Voxer IP. It's one of the other plaintiffs in this case, but  
09:19:43 6 for your purposes they're the same company during this trial.

09:19:46 7 And you'll also hear that this patent is entitled to  
09:19:49 8 a priority date going back to at least February of 2008, when  
09:19:55 9 the original patent application that they filed that was the  
09:19:58 10 parent of these patents being asserted was filed.

09:20:01 11 Now, you'll hear that Voxer is asserting four claims  
09:20:06 12 from the '270 patent, the '270 patent. It's Claims 34, 47, 48,  
09:20:12 13 and 51, and there will be further testimony and discussion of  
09:20:16 14 those patents during the trial.

09:20:18 15 Now, the second patent being asserted by Voxer is  
09:20:21 16 Voxer's '557 patent. Again, you can see that Mr. Katis and  
09:20:25 17 Mr. Ranney are listed as coinventors. That patent is also  
09:20:29 18 assigned to Voxer IP, and that patent also claims priority back  
09:20:35 19 to at least February 8, 2008. And Voxer is asserting two  
09:20:40 20 claims from that patent, Claim 1 and Claim 9.

09:20:44 21 Now, it's important to put us back in time a little  
09:20:47 22 bit so that we all have some perspective about the world that  
09:20:51 23 existed when Mr. Katis and Mr. Ranney were considering their  
09:20:53 24 inventions back in 2007. And, as you can see on the timeline,  
09:21:00 25 the very first provisional that Voxer filed on June 28, 2007

09:21:05 1 was the day before the first iPhone came out.

09:21:08 2           And while we're all now used to a smart phone world  
09:21:13 3 where we can use our Apple iPhones or Android devices, things  
09:21:18 4 were very different in the pre-smart phone world where  
09:21:20 5 Mr. Katis and Mr. Ranney were considering their inventions.  
09:21:24 6 And you'll hear, for example, how bandwidth and networking  
09:21:27 7 conditions were much lower then, where it was a 2G world, not a  
09:21:33 8 5G world, although we don't always get 5G. But you'll hear how  
09:21:38 9 the networks were very different then.

09:21:41 10           Now, like I mentioned from its founding, Voxer was  
09:21:44 11 eager to seek patent protection for its inventions. And you'll  
09:21:48 12 hear that it did that because Mr. Katis and Mr. Ranney wanted  
09:21:51 13 to protect themselves against the dominant players in the  
09:21:54 14 marketplace. At the time that was mobile carriers like AT&T  
09:21:58 15 and Verizon, but it was also the handset companies like  
09:22:02 16 Motorola, and then certainly Internet companies that moved into  
09:22:07 17 telecommunication space, companies like Google and Facebook.

09:22:10 18           But, in addition to seeking patent protection, Voxer  
09:22:13 19 also set out to build a world-class app, a company -- a product  
09:22:16 20 that could deliver live messaging to smart phones. And after  
09:22:21 21 years of effort, building and rebuilding their server  
09:22:25 22 infrastructure so they could deliver fast, seamless delivery of  
09:22:29 23 live messaging to their users with what you'll hear from  
09:22:34 24 Mr. Ranney was a scalable network architecture that could  
09:22:37 25 accommodate millions and millions of users, Voxer rolled out

09:22:42 1 their apps for iOS and Android in 2011. And you can see on the  
09:22:48 2 timeline that their app for iOS, for iPhone, that was in May,  
09:22:52 3 and their app for Android, that was in November of 2011.

09:22:57 4 Now, the Voxer logo was a picture of a smiling  
09:23:03 5 walkie-talkie. I think they called it "Walkie." It was a nod  
09:23:06 6 to some of Mr. Katis' original thinking that led to Voxer. But  
09:23:09 7 the app itself was much more than that.

09:23:11 8 Now, as many of you probably remember from being a  
09:23:14 9 kid, a walkie-talkie worked where only one person could speak  
09:23:19 10 at a time, it wouldn't be recorded, you needed someone else  
09:23:23 11 connected to it for you to be able to transmit to them. With  
09:23:27 12 the Voxer app, by contrast, once someone started recording  
09:23:31 13 their voice, that was up loaded to the Voxer servers even  
09:23:34 14 before a recipient was connected and the message could be heard  
09:23:38 15 live or on a recorded basis.

09:23:42 16 Now, you will hear that this first app did not have  
09:23:44 17 video, and that was because, like we were talking about,  
09:23:49 18 phones, the handsets didn't work that well back then, and  
09:23:52 19 bandwidth constraints didn't make it viable for them to have  
09:23:55 20 video at that time. But you will hear from Mr. Ranney that the  
09:23:59 21 code for using video was already written for the server at that  
09:24:03 22 point. Voxer just needed the world to catch up in terms of the  
09:24:08 23 headset -- the handset devices and the networks.

09:24:12 24 Now, shortly after the Voxer app's release in late  
09:24:15 25 2011, the app went viral. You'll hear that Voxer was often the

09:24:18 1 number one app in the App Store, even ahead of Facebook, in  
09:24:22 2 social networking apps. And this was in the late 2011 time  
09:24:26 3 frame.

09:24:26 4 And then in 2012, for the calendar year, it was  
09:24:29 5 number 13 out of all apps in the App Store. It was ahead of  
09:24:36 6 Facebook Messenger, which you can see was number 23. And by  
09:24:43 7 the end of 2012, you'll hear from Mr. Katis that Voxer had  
09:24:47 8 nearly 60 million total users.

09:24:49 9 Now, the viral success of Voxer's app caught the  
09:24:52 10 attention of lots of people in technology. Many companies  
09:24:55 11 reached out to Voxer, including Facebook. And you'll hear  
09:24:59 12 that, beginning at the end of 2011, Facebook reached out to  
09:25:03 13 Voxer on a number of occasions to see if they could do business  
09:25:10 14 together. And, again, for some perspective, at the end of  
09:25:15 15 2011, Facebook wasn't a publicly traded company. So it was in  
09:25:18 16 a different position than, obviously, you think of Facebook  
09:25:20 17 today. Beyond, that its Facebook Messenger product didn't even  
09:25:24 18 offer voice at the time that Voxer was offering voice for  
09:25:27 19 theirs.

09:25:27 20 And you can see on the timeline that there was a  
09:25:29 21 series of meetings beginning at the end of 2011 and going into  
09:25:35 22 February and March of 2012, where Voxer met with some of the  
09:25:38 23 most senior executives at Facebook, all the way up to senior  
09:25:44 24 executives such as Mike Schroepfer, who was the director of  
09:25:48 25 engineering, and Mark Zuckerberg himself, Facebook's CEO.

09:25:50 1 And you'll hear that Mr. Katis and Mr. Ranney, in the  
09:25:53 2 series of meetings they had with these senior executives and  
09:25:57 3 with Facebook engineers, described their live messaging  
09:26:02 4 technology. And you'll hear that Mr. Katis, because he was  
09:26:05 5 concerned about his position in the marketplace, repeatedly  
09:26:09 6 described that they had sought patent protection for the  
09:26:13 7 various inventions that their company had.

09:26:16 8 Now, internal documents from Facebook showed that  
09:26:19 9 Facebook viewed Voxer's technology very positively. After  
09:26:23 10 their first substantial meeting in February of 2012 with  
09:26:27 11 Peter Deng, who was the director of product for Facebook  
09:26:31 12 Messenger -- and you'll hear some of his testimony in this  
09:26:34 13 trial -- Deng described Voxer as having "good product sense."  
09:26:37 14 He described that the founders were "long-term thinkers," where  
09:26:42 15 "their vision was to take over the space between phone-to-phone  
09:26:45 16 and text." And he said that they "built good technology."

09:26:48 17 And you can see there that he wrote, "Not only did  
09:26:51 18 their system scale well with their hyper growth late last year,  
09:26:55 19 but they focused on build the products -- build the products to  
09:27:01 20 have really good flows."

09:27:04 21 And you can see this is an e-mail from February 8,  
09:27:08 22 2012, shortly after their February 6th meeting, which Mr. Deng  
09:27:13 23 sent to mark@facebook.com, who is Mr. Zuckerberg,  
09:27:17 24 Mike Schroepfer, and some other senior Facebook executives.

09:27:22 25 Now, you'll also hear what Zuckerberg himself wrote.

09:27:25 1 And he said: "I'm not surprised that the founders are smart.  
09:27:29 2 The product seems generally well done. It might be worth  
09:27:32 3 getting them on board if the price is reasonable."

09:27:36 4 Now, at the time, Voxer was seeking funding for its  
09:27:42 5 company, and you'll hear from Mr. Katis that they did actually  
09:27:47 6 obtain that funding in April of 2012. And that funding valued  
09:27:51 7 Voxer at about \$200 million, and internal Facebook documents  
09:27:56 8 confirm that they knew that was the valuation that people were  
09:28:01 9 talking about with respect to Voxer.

09:28:04 10 This is an e-mail sent from a Facebook senior  
09:28:07 11 executive, Amin Zoufonoun, to Chris Daniels, talking about the  
09:28:09 12 fact that they're considering Voxer for an acquisition and that  
09:28:15 13 Voxer was raising funding that valued them at \$200 million.

09:28:19 14 Now, as part of the series of meetings that Mr. Katis  
09:28:23 15 and Mr. Ranney had, they had a meeting with Peter Deng again --  
09:28:29 16 they had several meetings with him. He was coordinating the  
09:28:33 17 efforts on behalf of Facebook with respect to investigating  
09:28:38 18 Voxer -- and then this meeting with Chris Daniels to discuss  
09:28:44 19 the potential licensing of Voxer's technology.

09:28:47 20 And you'll hear from Mr. Ranney that at that meeting  
09:28:51 21 he had a white board, and he was describing how Voxer's  
09:28:55 22 technology worked. And Mr. Ranney will testify that, during  
09:28:58 23 that meeting, a number of product engineers and other engineers  
09:29:03 24 and executives for Facebook came in and were asking questions  
09:29:06 25 about "Could you use this live messaging technology for video?"

09:29:10 1 And both he and Mr. Katis explained that you could and how you  
09:29:13 2 would do that.

09:29:14 3 Now, you're also going to hear from Mr. Katis that,  
09:29:18 4 at the end of the meeting, he went up to Chris Daniels and  
09:29:22 5 asked him what he thought about it. And Chris Daniels said to  
09:29:27 6 him that he thought that the meeting was great. There was just  
09:29:30 7 one thing. Facebook was considering whether or not Voxer's  
09:29:33 8 technology was core and whether or not Voxer was a competitor.

09:29:36 9 And you're going to hear from Mr. Katis that he was  
09:29:39 10 troubled by this statement. Mr. Katis was concerned that, if  
09:29:43 11 Facebook determined that Voxer's technology was core and that  
09:29:46 12 Voxer was a competitor, then they were going to build that  
09:29:52 13 technology themselves. They weren't going to license it from  
09:29:58 14 some other company that had control over it.

09:30:01 15 Now, after that meeting, abruptly, despite months of  
09:30:04 16 productive discussions, Facebook told Voxer at the end of March  
09:30:09 17 that they weren't interested. And you'll hear from Mr. Katis  
09:30:12 18 that he was surprised by this; that it didn't make sense, given  
09:30:16 19 the trajectory of their discussions that they'd had.

09:30:22 20 Now, what Voxer didn't know is that Facebook internal  
09:30:25 21 documents will show that Facebook had been having discussions  
09:30:29 22 about building a decent version of Voxer themselves in-house.

09:30:32 23 Now, fast-forward a bit to August of 2015. Facebook  
09:30:35 24 began to roll out Facebook and Instagram Live, their real-time  
09:30:39 25 streaming video services. And upon seeing this, Mr. Katis was

09:30:43 1 reminded of that discussion he had had with Chris Daniels after  
09:30:47 2 their March 2012 meeting, where after discussing the video use  
09:30:59 3 cases for live messaging, as well as Voxer's various patents,  
09:31:04 4 Mr. Daniels said that Facebook was trying to decide if Voxer's  
09:31:09 5 technology was core and if Voxer was a competitor. And you'll  
09:31:14 6 hear from Mr. Katis that, after seeing Facebook Live and  
09:31:18 7 Instagram Live roll out, that Mr. Katis determined that  
09:31:22 8 Facebook's answer to both those questions was yes.

09:31:25 9           Now, Mr. Katis reached out to Facebook in early 2016  
09:31:29 10 after this, and he said, look, in a series -- in a meeting that  
09:31:34 11 he had and in some e-mails, he said: We think Facebook Live  
09:31:40 12 looks like our patented technology, and Voxer sent materials to  
09:31:44 13 Facebook describing their patents and invited Facebook to  
09:31:49 14 engage in some licensing discussions. But Facebook wasn't  
09:31:54 15 interested.

09:31:54 16           And then, as Facebook enjoyed the success of Live, as  
09:31:57 17 live videos grew from hundreds to thousands to tens of  
09:32:02 18 thousands, to hundreds of thousands, to millions, to tens of  
09:32:07 19 millions, to almost a billion live videos a month, Voxer was  
09:32:12 20 compelled to bring this lawsuit to protect its patent rights.

09:32:15 21           Voxer had done the right thing. Mr. Katis and  
09:32:18 22 Mr. Ranney patented their technology, and they disclosed it  
09:32:22 23 publicly. And the evidence will show that Facebook did the  
09:32:26 24 wrong thing. They decided to use someone else's technology  
09:32:29 25 rather than innovate. Consequently, Voxer expects Facebook and



09:32:34 1 Instagram to honor Voxer's patent rights, and now they're  
09:32:38 2 asking you to enforce those patents and make Facebook and  
09:32:41 3 Instagram to do the right thing, too: compensate Voxer for  
09:32:47 4 their use.

09:32:47 5 And that leads me to two other witnesses that you're  
09:32:52 6 going to hear from in this trial. The first is  
09:32:57 7 Dr. Michael Mitzenmacher. Dr. Mitzenmacher is Voxer's  
09:33:00 8 technical expert. He's an expert in computer networking and  
09:33:04 9 multimedia processing. He has degrees from Harvard and  
09:33:08 10 Berkeley, and he's currently a tenured professor at Harvard in  
09:33:10 11 the computer science department.

09:33:11 12 And he went through and carefully studied all of  
09:33:18 13 Facebook and Instagram's technical documents, and he looked at  
09:33:21 14 the source code, the computer code that runs Facebook and  
09:33:24 15 Instagram Live, and he reviewed the various testimony of the  
09:33:28 16 Facebook and Instagram witnesses who have offered testimony  
09:33:31 17 about how their products operate.

09:33:33 18 And then with that information he carefully compared  
09:33:37 19 Facebook and Instagram Live and their operations with each of  
09:33:40 20 the elements of the claims that are being asserted in the '270  
09:33:44 21 and '557 patents. And he's going to show you the infringement  
09:33:49 22 element by element. He's going to walk you through and show  
09:33:52 23 how, in the accused Facebook and Instagram products, each  
09:33:56 24 element of the asserted Voxer claims are found there.

09:33:59 25 And that's Voxer's burden as plaintiff. We can't

09:34:02 1 just come in here and say we think Facebook and Instagram are  
09:34:05 2 infringing. We have the burden of proof, and we need to show  
09:34:08 3 you that, by a preponderance of evidence, the accused products  
09:34:11 4 meet every element.

09:34:13 5 And the judge will instruct you that a preponderance  
09:34:15 6 of the evidence simply means "more likely than not." And  
09:34:18 7 Dr. Mitzenmacher will walk you through this, and he'll testify  
09:34:21 8 that, in his expert opinion, the accused Facebook and Instagram  
09:34:24 9 live products meet each and every element of the six asserted  
09:34:28 10 patent claims.

09:34:30 11 Now, you will also hear from Alan Ratliff.  
09:34:31 12 Mr. Ratliff is Voxer's damages expert. He's a certified public  
09:34:37 13 accountant and a licensed attorney. He's an expert in patent  
09:34:42 14 damages and licensing.

09:34:45 15 Now, if you find infringement, as we believe you  
09:34:48 16 will, then the judge will instruct you that you have to award  
09:34:52 17 damages. Now, the law provides that, upon finding the  
09:34:57 18 claimant -- upon finding for the claimant, the court shall  
09:35:01 19 award the claimant damages adequate to compensate for the  
09:35:03 20 infringement but, in no event, less than a reasonable royalty.  
09:35:08 21 So what Voxer is asking for is a reasonable royalty based on  
09:35:10 22 the use of Voxer's invention by Facebook and Instagram in their  
09:35:16 23 products Facebook and Instagram Live.

09:35:18 24 Now you'll hear from Dr. Mitzenmacher and Mr. Ratliff  
09:35:20 25 that, as part of their analysis, the infringing features in

09:35:25 1 this case give great benefit to Facebook and Instagram. And,  
09:35:28 2 based on these analyses, Mr. Ratliff determined that a  
09:35:32 3 reasonable royalty to date would be \$174 million. Now, you  
09:35:38 4 will also hear from Mr. Ratliff that Facebook made much, much,  
09:35:42 5 much more than that from Voxer's inventions.

09:35:46 6 Now, one last thing on damages: The number that  
09:35:50 7 we're asking for is only up to the date of this trial. Now,  
09:35:53 8 why is that? That's because the patents that are in suit here  
09:35:59 9 don't expire until February of 2028. So we're going to ask  
09:36:05 10 that you find the damages should be in the form of a running  
09:36:09 11 royalty through the date of the trial.

09:36:11 12 And if Facebook and Instagram go on to continue using  
09:36:14 13 these infringing features, they can continue to pay a royalty.  
09:36:19 14 If they decide, however, going forward that they want to stop,  
09:36:23 15 they can stop infringing, and they wouldn't be obligated to  
09:36:25 16 pay. And we will ask you on the verdict form which you'll see  
09:36:30 17 in your binders to find damages in the form of a reasonable  
09:36:33 18 royalty.

09:36:34 19 Now, what will Facebook and Instagram say? They will  
09:36:36 20 likely say they don't infringe for some number of reasons, or  
09:36:39 21 that the patents, despite the presumption of validity and  
09:36:42 22 despite the fact that Facebook has to prove invalidity by a  
09:36:46 23 heightened clear and convincing evidence standard, they may  
09:36:49 24 argue that the patent's aren't valid. Or, that even if the  
09:36:53 25 patents are valid and they are infringed, that they shouldn't

09:36:57 1 be obligated to pay very much, if anything.

09:37:00 2 But, regardless of what they say, I just ask you to  
09:37:04 3 listen carefully and evaluate if what they are saying makes  
09:37:08 4 sense, if it makes sense to you, in light of all of the  
09:37:12 5 evidence. You're here because of your common sense and our  
09:37:14 6 system trusts that your common wisdom is the best way to weigh  
09:37:18 7 the evidence and decide who is right.

09:37:20 8 So, I'd like to say thank you again for your time on  
09:37:23 9 behalf of all of our team. We very much look forward to  
09:37:26 10 addressing you about Voxer's claim over the rest of the trial.

09:37:30 11 Thank you very much.

09:37:31 12 THE COURT: Thank you. Defendant may open.

09:37:33 13 MR. VAN NEST: Can I just have a moment to set up,  
09:37:35 14 Your Honor?

09:37:36 15 THE COURT: You may.

09:37:37 16 MR. VAN NEST: Your Honor, may I proceed?

09:37:38 17 THE COURT: You may.

09:37:39 18 **DEFENDANT'S OPENING STATEMENT**

09:37:39 19 MR. VAN NEST: Thank you, very much. May it please  
09:37:41 20 the Court:

09:37:42 21 Good morning, ladies and gentlemen, and welcome back.  
09:37:44 22 My name is Bob Van Nest, and it's a real privilege for me,  
09:37:46 23 along with my team, to be here during our trial representing  
09:37:53 24 Facebook, one of the most innovative American technology  
09:37:56 25 companies in the world today. I also want to begin by thanking

09:38:35 1 you for your service as jurors. This is a very important  
09:38:38 2 dispute for both parties, and we really appreciate your being  
09:38:42 3 here.

09:38:42 4 We know that jury service is a burden, it's not  
09:38:47 5 voluntary, and you're taking time out of your busy lives. So  
09:38:51 6 we really do appreciate the time you'll be spending with us  
09:38:55 7 this week and early next.

09:38:57 8 The Facebook and Instagram products at issue in this  
09:39:00 9 lawsuit, Facebook Live and Instagram Live, are not using  
09:39:02 10 Voxer's patents. The engineers that built these products will  
09:39:07 11 be here to testify that they used their own ideas, their own  
09:39:10 12 engineering, and, in some cases, long-standing standardized  
09:39:15 13 technology for video streaming that have been around for a long  
09:39:20 14 time.

09:39:20 15 None of this work was based on the Voxer patents, and  
09:39:27 16 there won't be any evidence that any engineer on the Facebook  
09:39:30 17 or Instagram Live development teams ever saw, used, or was even  
09:39:33 18 aware of the Voxer patents. As a matter of fact, when Facebook  
09:39:39 19 Live and Instagram Live were developed, these patents did not  
09:39:42 20 even exist. They hadn't even been applied for. They were  
09:39:46 21 applied for years after these products launched. And so  
09:39:55 22 Facebook Live is very different from the Voxer patents.  
09:39:58 23 Nothing was copied, and there is no patent infringement.

09:40:02 24 Now, another reason for the differences between  
09:40:06 25 Facebook and Instagram Live and Voxer is that the companies

09:40:09 1 were trying to solve very different problems. Voxer was trying  
09:40:13 2 to improve communications where you needed to make a direct  
09:40:17 3 communication to an intended recipient where guaranteed  
09:40:22 4 delivery was very important.

09:40:23 5 So they built a voice walkie-talkie app where you  
09:40:29 6 could send a message directly to an intended recipient and try  
09:40:33 7 to ensure reliable delivery. But it was only a voice app. And  
09:40:40 8 Voxer was never able to use its technology to build a live  
09:40:44 9 streaming video product. Never.

09:40:46 10 Now, Facebook on the other hand was trying to develop  
09:40:53 11 something different. They were aiming for a broadcast system,  
09:40:56 12 where a live video could be made available to thousands or even  
09:40:59 13 millions of people upon their request. The original idea for  
09:41:04 14 Facebook Live was intended for celebrities. Facebook had a  
09:41:10 15 feature, and the idea was let's give celebrities another way to  
09:41:15 16 connect with their fan base by making live videos available to  
09:41:22 17 fans who requested to see them. There was no guarantee of  
09:41:27 18 delivery to anyone.

09:41:29 19 Now, the Facebook engineering team took about a year,  
09:41:34 20 and you'll will hear about that from the engineers that  
09:41:37 21 participated in it. And at the height of it, it involved more  
09:41:42 22 than 100 Facebook engineers trying to get this product ready  
09:41:45 23 for launch.

09:41:45 24 Now, when these companies met back in 2012, the focus  
09:41:50 25 of the discussion was on voice communications. At that time

09:41:53 1 live video streaming was not new; it had been around for a long  
09:41:57 2 time. There were other examples which we'll see in a minute.  
09:42:02 3 And Voxer didn't have a live video streaming product. They had  
09:42:12 4 a voice app. Facebook was considering adding voice to  
09:42:16 5 Messenger, and so the discussions focused on that: voice  
09:42:22 6 communications, not video. But, as you saw a little bit  
09:42:26 7 earlier, the technology just wasn't right for Facebook, and  
09:42:29 8 they said no thanks.

09:42:31 9 Now, after Facebook launched Facebook Live in 2015,  
09:42:36 10 Mr. Katis and Voxer came back to Facebook to offer to license  
09:42:40 11 or sell their technology. They didn't complain about patent  
09:42:45 12 infringement. They didn't say anything had been copied. They  
09:42:50 13 didn't contend anything was wrong. They were there just  
09:42:53 14 offering to sell or license their technology to Facebook, and  
09:43:00 15 we'll see that in detail in just a minute. But, again,  
09:43:08 16 Facebook said this technology is not right for us, and the  
09:43:12 17 parties went their separate ways.

09:43:15 18 It wasn't until a couple of years later that Voxer  
09:43:18 19 even applied for these live streaming video patents. That was  
09:43:23 20 in 2017 and 2018, a couple of years after Facebook Live  
09:43:27 21 launched. But by that time, by the time they applied to the  
09:43:31 22 patent office for these patents, Facebook Live had already been  
09:43:36 23 designed, built, launched, and was fully public.

09:43:41 24 Now, Voxer technology wasn't right for Facebook, but  
09:43:44 25 it wasn't right for the industry either. After Facebook told

09:43:49 1 Voxer for the second time we're not interested, Voxer marketed  
09:43:52 2 this technology and their patents to nearly 100 technology  
09:43:56 3 companies, nearly 100. Not one other company has licensed or  
09:44:01 4 purchased Voxer's technology for any purpose. They went to the  
09:44:06 5 market, they offered their patents, and not a single company  
09:44:11 6 was interested. And even Voxer has not used any of the  
09:44:16 7 inventions in the '270 or the '557 patents in their products.  
09:44:25 8 So not even Voxer is using this technology.

09:44:28 9           So let me turn to our key points of evidence. This  
09:44:32 10 is what I'm going to outline this morning for you. The first  
09:44:39 11 key point is that Facebook engineers built Facebook Live using  
09:44:43 12 their own technology, not Voxer's technology. They did their  
09:44:47 13 own work, and you're going to hear from them shortly.

09:44:51 14           Technology in Facebook Live's products is  
09:44:55 15 fundamentally different from anything in the Voxer patents.  
09:45:00 16 That means there is no patent infringement.

09:45:04 17           And Voxer's technology just wasn't right for Facebook  
09:45:07 18 or anyone else in the industry.

09:45:09 19           Now, this is a timeline that we can use to kind of  
09:45:12 20 keep the key events in focus. And before I get into it, I want  
09:45:18 21 to point out just a couple of things that we're going to be  
09:45:20 22 reviewing. First of all, neither Facebook nor Voxer invented  
09:45:26 23 live streaming video or adaptive bitrate technology, which is  
09:45:32 24 the subject of the '557 patent. Neither company did that.  
09:45:36 25 These technologies have been around since the '90s.



09:45:39 1 Facebook launched in 2004. It was available then to  
09:45:42 2 college students. And since that time, long before Facebook  
09:45:46 3 Live, Facebook has introduced new features along the way.

09:45:53 4 Now, when the parties first met in February, March of  
09:45:57 5 2012 and had the discussions you heard about, these patents,  
09:46:03 6 the '270 and the '557, they didn't exist. They weren't applied  
09:46:09 7 for, as you see on the timeline, until a couple of years later.  
09:46:15 8 So Facebook Live was built and launched before these patents  
09:46:20 9 were in existence.

09:46:22 10 So let's start with the timeline. We're going to go  
09:46:23 11 over to the left and pull it out and look at live streaming  
09:46:30 12 video. As you can see here, live streaming video has been  
09:46:34 13 around since the '90s. In June of 1993, a band -- and I put  
09:46:39 14 that in quotes -- called Severe Tire Damage was the first to  
09:46:42 15 live stream a concert. Now, I asked the folks -- I've never  
09:46:47 16 heard of these guys. They are a bunch of computer scientists.  
09:46:50 17 They're not a real band. But they livestreamed a concert in  
09:46:53 18 the early '90s. And as you can see from the timeline, there  
09:46:58 19 were a lot of developments along the way.

09:47:01 20 In '97, RealNetworks launched a RealVideo product.  
09:47:06 21 By '98 this was being used so commonly that industry adopted a  
09:47:10 22 protocol. That's an industry standard protocol, real-time  
09:47:12 23 streaming protocol, the RTSP.

09:47:15 24 In the 2000s this took off. Madonna livestreamed a  
09:47:18 25 concert to 9 million people. University of Washington started

09:47:22 1 interactive learning. That's like what we had to do during  
09:47:25 2 COVID, the interactive learning video like COVID. But that  
09:47:30 3 with UW back in '01. And by 2003 all the major instant  
09:47:35 4 messaging systems were supporting live video. And you can see  
09:47:40 5 there on the timeline Skype was introduced and then Microsoft  
09:47:44 6 had a product. All this happened before Voxer even existed and  
09:47:49 7 long before Voxer even built its first app.

09:47:51 8           And the same is true of adapted bitrate technology.  
09:47:55 9 What is that? This is technology that's relevant to the '557.  
09:47:59 10 This involves your phone or your tablet or your laptop  
09:48:04 11 selecting a version of video that's suitable given your  
09:48:09 12 bandwidth. You may have noticed, say, watching a Youtube  
09:48:13 13 video, that sometimes you get a very good picture and sometimes  
09:48:17 14 it's pretty fuzzy. You're actually getting a different version  
09:48:21 15 of the video depending on how much bandwidth you have. So  
09:48:24 16 adaptive bitrate technology, which was launched in the early  
09:48:30 17 '90s, is a way of having your device select a version that's  
09:48:34 18 suitable, depending on how much bandwidth you've got.

09:48:38 19           Now, this started in '92 with a paper by a man named  
09:48:42 20 Delgrossi, and then the University of Carolina, Dr. Kevin  
09:48:46 21 Jeffay, who is sitting here in the courtroom and will be a  
09:48:48 22 witness in the case he was one of the earlier developers of  
09:48:53 23 this technology and saw it along the way. And, again, in 1998  
09:48:57 24 RealNetworks introduced a product. In 2002 Microsoft did.  
09:49:05 25 This product was so commonly used that, by 2003, there was

09:49:09 1 already a text book that was applying the products -- applying  
09:49:12 2 the technology. And you can see in 2004 an inventor named  
09:49:17 3 Seckin applied for a patent. We're going to be talking about  
09:49:21 4 her patent application in a moment. That was years before  
09:49:27 5 Voxer was even formed.

09:49:31 6 Now, I think most folks know that Facebook has many  
09:49:34 7 different features. There's a friends feature, groups.  
09:49:39 8 There's many different groups you can join. There's a feed  
09:49:42 9 that people can scroll through. You can buy things on  
09:49:44 10 Facebook. The point is there are many features on Facebook  
09:49:47 11 beyond Facebook Live. And by the time Facebook Live came  
09:49:51 12 along, Facebook was already successful and had millions and  
09:49:56 13 billions of users.

09:49:57 14 Here's a little timeline for Facebook which shows  
09:49:59 15 that, starting in '04, they continually introduced new  
09:50:02 16 features. And then in '06 the news feed. That's basically  
09:50:07 17 your friends and groups scroll that comes on your -- on your  
09:50:12 18 app. In 2007 they adopted -- they launched video. Now, that's  
09:50:22 19 not live video. That's prerecorded video like you see on  
09:50:30 20 Youtube and so on. But that was launched in '07. The  
09:50:34 21 Marketplace as well. Facebook Chat in '08, Facebook Messenger  
09:50:37 22 in 2011. And, as I said, the Facebook Live product was  
09:50:40 23 independently developed by Facebook engineers, not using any  
09:50:44 24 Voxer patents.

09:50:46 25 Now, when these parties met and talked in 2011 and

09:50:50 1 '12, the focus of it was on voice messaging, not video, because  
09:50:56 2 Voxer didn't have a live streaming video product. They had a  
09:51:01 3 walkie-talkie app which, as you can see from their own  
09:51:06 4 material, it's an app that turns your smart phone into a walk  
09:51:11 5 walkie-talkie.

09:51:13 6 It was a voice app, not a video app, and these  
09:51:18 7 discussions had nothing to do with Facebook Live video or  
09:51:24 8 Instagram Live video which was still off in the future. They  
09:51:30 9 had to do with the possibility of adding voice to the instant  
09:51:34 10 messaging system that Facebook had at the time, which was  
09:51:37 11 called Messenger.

09:51:39 12 And, in fact, as Mr. Katis is going to concede during  
09:51:43 13 the trial, Voxer never did develop the ability to send  
09:51:47 14 real-time video messages. That never happened. What Voxer was  
09:51:52 15 offering, and all it has ever offered, is a voice app, not a  
09:51:59 16 livestreaming video product.

09:52:01 17 And maybe the best evidence of that is this e-mail  
09:52:03 18 which is an internal Facebook e-mail from that time, and you  
09:52:09 19 can see that the Facebook folks are talking about what we  
09:52:13 20 really want is VOIP for iOS. VOIP is Voice over Internet. iOS  
09:52:21 21 is Apple. That's the operating system for Apple phones. They  
09:52:25 22 were trying to develop a voice product for Apple phones. And  
09:52:31 23 they say we want to find the shortest path to that, and it  
09:52:37 24 turns out we might be able to build it ourselves. Again, we're  
09:52:42 25 talking about voice technology, and they had some hesitation

09:52:46 1 about whether or not the Voxer folks could really support that  
09:52:48 2 effort. That was in 2012. And, as you saw, Facebook told  
09:52:52 3 Voxer, sorry, we're not interested.

09:52:55 4 Now let's fast-forward a little bit to 2015. These  
09:52:59 5 are two of the Facebook engineers that led the development team  
09:53:02 6 that build Facebook Live, and they'll be here to testify to the  
09:53:06 7 work that they and their teams did. They'll talk about the  
09:53:10 8 problems they faced, the challenges of developing a system like  
09:53:14 9 this, and the solutions they adopted to overcome them.  
09:53:21 10 Mr. Capra, who is an engineering manager, led the product team,  
09:53:26 11 so he was developing the design, the look and feel, how do  
09:53:31 12 creators use it, how do fans use it, what does it look like.  
09:53:36 13 And Mr. Mathur led the infrastructure team.

09:53:38 14 They built the guts of Facebook Live. And he'll talk  
09:53:42 15 about the problems they had and how they overcame them. But,  
09:53:46 16 critically, they will testify that neither they nor anyone on  
09:53:51 17 the development teams either saw, used, or had any awareness of  
09:53:55 18 Voxer patents.

09:53:56 19 So what's the timeline for developing the product?  
09:54:01 20 It started in 2014. Facebook had a feature called Mentions for  
09:54:06 21 Celebrities, and the folks running Mentions wanted to find a  
09:54:11 22 better way for celebrities to connect with the fans. And they  
09:54:18 23 thought that a live video product might be a good way to do it.

09:54:24 24 So in April of 2015, they organized an engineering  
09:54:27 25 day called "Coding Under the Stars." A group of engineers met

09:54:32 1 on the roof of a Facebook building, and they spent a full day  
09:54:36 2 trying to develop a prototype for livestreaming. You'll hear  
09:54:40 3 this referred to, ironically, as a "hackathon." Well,  
09:54:45 4 hackathon in this context doesn't mean stealing -- breaking  
09:54:48 5 into somebody's computer. It means spending a full day with a  
09:54:54 6 group in trial and error trying to develop a prototype, and  
09:54:57 7 they did.

09:54:57 8 And so by August of 2015 they were ready for a live  
09:55:00 9 celebrity launch, which you'll see in a minute with Dwayne  
09:55:03 10 Johnson, that goes by "the Rock." And in April of 2016 they  
09:55:09 11 launched publicly. And by that I mean any user could use  
09:55:12 12 Facebook Live as of then.

09:55:13 13 The big problem they were trying to solve wasn't the  
09:55:16 14 basics of livestreaming video. It was: What do you do with  
09:55:21 15 the thundering herd? If you're going to make live video  
09:55:25 16 available to thousands or millions of people, how do you set up  
09:55:29 17 a system that can handle that if you've got that many people  
09:55:34 18 all at once trying to watch the video?

09:55:37 19 Here's a picture of the Coding Under the Stars on the  
09:55:40 20 left. Mr. Mathur was there, and he'll be testify about that.  
09:55:43 21 And on the right is the prototype that the engineers developed  
09:55:47 22 that day, and Mr. Mathur is the one that will introduce that  
09:55:50 23 and explain what they did.

09:55:53 24 So that was April. By August this was good enough to  
09:55:57 25 showcase with Dwayne Johnson. And let's just watch a few

09:56:01 1 minutes of the launch, the original live launch, of the  
09:56:05 2 celebrity version of Facebook Live.

09:56:08 3 (Video played)

09:56:08 4 MR. VAN NEST: So that's The Rock. And that was in  
09:56:11 5 August of 2015, and Mr. Capra supervised that launch and he'll  
09:56:17 6 be here to testify all about that.

09:56:20 7 Now, after Facebook Live launched, as you heard  
09:56:23 8 little bit earlier today, Mr. Katis came back to Facebook with  
09:56:27 9 this e-mail offering to sell or license the technology. And he  
09:57:00 10 says in an e-mail to Stan Chudnovsky at Facebook: "Here's an  
09:57:04 11 overview deck and a more detailed IP statement that highlights  
09:57:08 12 some of our key patents. As we discussed, we're getting  
09:57:14 13 inbound interest." That means people are pursuing us. "But if  
09:57:21 14 we go down that road, we'd rather start with someone like  
09:57:24 15 yourselves that we feel we share common values and culture  
09:57:29 16 with."

09:57:29 17 This was a very friendly e-mail. We share values and  
09:57:33 18 culture with you. You don't see any claim of infringement or  
09:57:36 19 claim of copying or claim that you're doing anything wrong. We  
09:57:43 20 share values with you, and we'd like to sell you our  
09:57:48 21 technology.

09:57:49 22 Now, you didn't see this. This was Mr. Stan  
09:57:53 23 Chudnovsky's response. His response was very open and candid.  
09:57:56 24 His response was, "As you mentioned, you have great IP for the  
09:58:03 25 space that Voxer is in. That said, all of our properties are

09:58:07 1 doing something completely different, and we currently have no  
09:58:11 2 plans to enter into different territories."

09:58:14 3           Very straightforward. We're in a different space  
09:58:17 4 than you are. And Mr. Katis didn't disagree with that. Here's  
09:58:21 5 his response on the top. "All good, Stan. Thanks for  
09:58:25 6 forwarding it on. Would love to grab lunch again sometime."

09:58:29 7           So this wasn't anything like a claim of infringement.  
09:58:34 8 This was an effort to sell or license your technology, a very  
09:58:39 9 friendly exchange, indeed.

09:58:41 10           Let's go back to our timeline, because everything  
09:58:44 11 we've talked about so far, the early adoption of these  
09:58:48 12 technologies, the launch of Facebook, the meetings in 2012, and  
09:58:54 13 the live launch, all of these things took place before either  
09:58:57 14 of the two patents in this lawsuit were applied for. So by the  
09:59:02 15 time they applied for the '270 in 2017 or the '557 in 2018,  
09:59:08 16 Facebook Live had been designed, launched, and built.

09:59:11 17           Our second key point of evidence is the technology in  
09:59:14 18 Facebook Live's products is fundamentally different from  
09:59:23 19 anything in the Voxer's patents. There is no patent  
09:59:26 20 infringement.

09:59:27 21           These companies were pursuing different goals.  
09:59:31 22 Voxer's goal was to improve communications between identified  
09:59:34 23 recipients, where guaranteed delivery was important. It was a  
09:59:40 24 messaging system to ensure that a message got through. That's  
09:59:43 25 not what Facebook was trying to accomplish. Facebook's was a



09:59:49 1 broadcast system.

09:59:50 2 Facebook was trying to build a broadcasting system  
09:59:54 3 that was capable of making live video available to millions of  
10:00:01 4 people who could view it upon request. There was no guarantee  
10:00:04 5 that anyone would receive it. It was available upon request,  
10:00:09 6 but the user had to request it. So, again, you see there the  
10:00:17 7 user on the right is making a request.

10:00:20 8 Now, this is a patent infringement case, and you're  
10:00:23 9 going to get some very detailed instructions from Judge Yeakel  
10:00:27 10 later on. But your main job is to determine whether the  
10:00:30 11 Facebook or Instagram Live products infringe the patents. And  
10:00:33 12 the bottom line of that is Voxer has the burden to prove that  
10:00:36 13 every element in the patent claim is found in the Facebook Live  
10:00:40 14 or Instagram Live products. Every element.

10:00:43 15 So I prepared this kind of simple example since it's  
10:00:49 16 football season. If someone has a patent on a volleyball or a  
10:00:53 17 soccer ball and the elements are it's made of leather, stitched  
10:00:58 18 together, filled with air, and round, then you have to show  
10:01:03 19 that the defendant's product has all those elements. Two out  
10:01:06 20 of three are not enough. Three out of four are not enough. So  
10:01:10 21 the football is made of leather, yep, stitched together, yep,  
10:01:14 22 filled with air, yep, but not round. So there's no  
10:01:18 23 infringement.

10:01:18 24 That's the analysis that you're going to be applying  
10:01:25 25 to this technology. I wish it were as simple as a soccer ball

10:01:30 1 or football, but this is what we have, and we're going to work  
10:01:33 2 through it with the experts and the testimony.

10:01:35 3 So let's talk about the two patents. This is the  
10:01:39 4 '270. It was applied for in May of 2017, and it claims a  
10:01:43 5 method for delivering video streaming to intended recipients  
10:01:46 6 using a recipient identifier.

10:01:48 7 What does that mean? Here are the claims. There's  
10:01:52 8 lots of words here, and our experts will -- will discuss them  
10:01:56 9 with you. But, as you can see from my red checkmarks, there  
10:02:00 10 are three separate elements that are not found in Facebook  
10:02:04 11 Live, because the patent requires sending a recipient  
10:02:09 12 identifier to an intended recipient when the video is  
10:02:13 13 transmitted and determining a location to which to deliver the  
10:02:17 14 video using that recipient identifier. It's a push system, if  
10:02:22 15 you will. It pushes the video out to an intended recipient to  
10:02:28 16 make sure there is a reliable delivery.

10:02:31 17 That's not how Facebook Live works at all. On the  
10:02:36 18 left I'm showing the Voxer system, which is my EMT captain here  
10:02:43 19 on the left, she is sending out messages to identified  
10:02:46 20 recipients that are going out to their IP addresses. It's a  
10:02:52 21 push system to make sure that, in an emergency, or in battle or  
10:02:57 22 wherever type of crisis you have, the message is delivered.

10:03:02 23 That's very different from Facebook Live or Instagram  
10:03:04 24 Live. That's a broadcast system. It's a broadcast in which  
10:03:09 25 the video is made available upon request, no recipient

10:03:14 1 identifier is used, and the video is delivered only to people  
10:03:19 2 who make a request. It's available upon request. So you can  
10:03:24 3 see it's a pull system. You have to pull it. That's what  
10:03:30 4 we're showing on the right. The fellow at the desk is making a  
10:03:36 5 request and pulling the video to his desktop. And there's the  
10:03:39 6 other two don't care.

10:03:41 7           Now, the patent describes in detail the problem it's  
10:03:45 8 trying to solve: The need for reliable delivery of critical  
10:03:49 9 messages in a crisis. You can see there this is language from  
10:03:54 10 the patent itself. Tactical communications are therefore  
10:03:57 11 plagued with several basic problems. There's no way to  
10:04:01 12 guarantee delivery of messages. That's one of the things that  
10:04:07 13 they're trying to achieve. And the answer is: When sending a  
10:04:13 14 message as part of a conversation associated with a number of  
10:04:16 15 people, all of the contacts receive the message. The claims in  
10:04:20 16 the patent, the '270, the identifier, and the identified  
10:04:24 17 recipient, are intended to create reliable delivery.

10:04:28 18           So let's go back to my example. My EMT captain is  
10:04:33 19 communicating to several folks on the team, and she's using an  
10:04:37 20 identifier to get a location to send the video to. And she  
10:04:43 21 pushes that video out to make sure that they -- that they  
10:04:47 22 receive it. Facebook, on the other hand, doesn't do it that  
10:04:50 23 way. It's a broadcast that's made available to millions of  
10:04:55 24 people, but only those who request it and pull it to their  
10:05:00 25 device will see it. That's the way it is.

10:05:03 1 Now, obviously, in a battlefield situation or in an  
10:05:06 2 emergency, it wouldn't make sense to send a Facebook Live video  
10:05:11 3 out on broadcast and simply hope that somebody decides to watch  
10:05:15 4 it. It's not intended for that purpose. And, therefore,  
10:05:20 5 because it doesn't meet all the elements of the '270, there's  
10:05:24 6 no infringement. That's the '270 patent, and you'll hear a lot  
10:05:29 7 more about that.

10:05:30 8 Two '557 was applied for in 2018, even later. It  
10:05:35 9 claims a method for using what I mentioned, adaptive bitrate  
10:05:41 10 streaming, in a live video system. Now, as we reviewed  
10:05:45 11 earlier, adaptive bitrate streaming has been around since the  
10:05:49 12 '90s. So there are two issues on this patent. One issue is:  
10:05:54 13 Should it even have issued from the patent office in the first  
10:05:59 14 place, or did someone else do it before Voxer did? And the  
10:06:03 15 second issue is: Even if it's valid, is Facebook or Instagram  
10:06:07 16 using the technology?

10:06:08 17 Let's take that second issue first. Here are the  
10:06:11 18 claims of the '557. The '557 claims a method for performing  
10:06:16 19 this adaptive bitrate technology by selecting a video message  
10:06:21 20 by the video message service infrastructure. Now, what does  
10:06:27 21 that mean? That requires that the servers in your system that  
10:06:31 22 are part of your infrastructure, they measure the bandwidth  
10:06:34 23 between the servers and the user's device -- a phone, tablet, a  
10:06:44 24 laptop -- and they select a version of the video that is  
10:06:49 25 appropriate based on bandwidth. If there's lots of bandwidth,

10:06:53 1 you can send a very -- a high-quality video and see great  
10:06:59 2 resolution. If it's low bandwidth, you send a lower-quality  
10:07:02 3 version and it's kind of fuzzy. That's what this claim is all  
10:07:07 4 about, and the patent requires that this be done by the  
10:07:10 5 infrastructure of the servers themselves. That is, again, not  
10:07:13 6 how Facebook Live or Instagram Live work.

10:07:15 7 In these systems it's the client device -- your  
10:07:18 8 laptop, your phone, your desktop, your tablet -- that measures  
10:07:22 9 the bandwidth and selects a version of the video. It's not  
10:07:26 10 done by the Facebook servers, and the Facebook servers provided  
10:07:31 11 the same service to Instagram, too. So it's not done by  
10:07:38 12 Facebook servers. In the Facebook Live and Instagram Live  
10:07:42 13 systems, it's done differently. Why? There's two reasons.

10:07:46 14 If you're building a broadcast system where you  
10:07:48 15 intend to send and make available to people, thousands or  
10:07:54 16 millions of viewers, then the Facebook servers could be  
10:07:59 17 overwhelmed by folks clamoring to request the video. That's  
10:08:06 18 one reason that this task is placed on the user's device -- the  
10:08:11 19 phone, the laptop, the tablet.

10:08:13 20 The second reason is the device knows best what it  
10:08:17 21 needs. Your device knows how big the screen is, how much  
10:08:22 22 resolution you can accommodate, how many pixels you can  
10:08:25 23 actually deal with. So in the Facebook and Instagram system,  
10:08:28 24 this task is dedicated to the client device, and that's why the  
10:08:34 25 '557 patent is not practiced by Facebook Live or Instagram

10:08:37 1 Live.

10:08:38 2 Now, I promised a second issue on this one, and that  
10:08:41 3 is that Voxer wasn't the first to develop whatever invention  
10:08:45 4 there is in the '557. Remember, the patent video that you-all  
10:08:50 5 saw yesterday said that, to be entitled to a patent, you have  
10:08:55 6 to be the first to invent the idea. To get the patent, you  
10:08:59 7 have to be the first. If someone beats you to it, you can't  
10:09:03 8 get a patent because it's already out there and published.

10:09:10 9 Now, what I'm showing here is a patent application by  
10:09:13 10 an inventor named Seckin, and she applied for a patent and  
10:09:19 11 published it back in 2004. And there's no dispute in the case  
10:09:24 12 that the Seckin patent application is earlier than Voxer.  
10:09:27 13 There's no dispute that it qualifies as prior art and qualifies  
10:09:30 14 as an invention, and the examiner in the patent office that  
10:09:35 15 evaluated the '557 patent wasn't aware of the Seckin  
10:09:39 16 application. They weren't aware of the Seckin application, so  
10:09:46 17 they didn't consider it. You'll be the first to consider the  
10:09:49 18 Seckin application in connection with the '557.

10:09:54 19 And what does it disclose? Her's a figure from the  
10:09:58 20 patent itself. The handwriting is original. And, as you can  
10:10:02 21 see, it describes a video streaming system using adaptive  
10:10:06 22 bitrate technology with every single element that Voxer is  
10:10:10 23 claiming on '557.

10:10:13 24 So on the left, that cloud is a little dark, but it  
10:10:18 25 says "still image audio video." So we're talking about video.

10:10:21 1 And up there in the top left, "live content." And we're  
10:10:25 2 streaming it to devices on the right, a phone, a laptop, looks  
10:10:33 3 like a desktop. And we're doing it using adaptive bitrate  
10:10:36 4 technology. That's what's shown in the middle. And Dr. Jeffay  
10:10:41 5 will be here to explain this a little bit, but he's created  
10:10:45 6 this simplified version taken right from the patent, and this  
10:10:51 7 is how it works. Seckin describes sending live content to a  
10:10:56 8 transcoder that creates different versions of the video. The  
10:11:01 9 thicker the lines, the better quality, the higher resolution.  
10:11:05 10 And the transcoder creates separate versions, and the server  
10:11:10 11 selects a version appropriate to the device that will  
10:11:12 12 ultimately receive it. Those are the client devices on the  
10:11:18 13 right. You've got a phone, maybe a tablet, a desktop, and so  
10:11:23 14 on and so forth.

10:11:25 15 This is the second invention. It operates with all  
10:11:28 16 the same elements. It discloses all the same features of the  
10:11:33 17 '557, which is why we say, and the evidence is going to show,  
10:11:36 18 that Seckin was first, she was earlier, and the '557 patent is  
10:11:39 19 not valid.

10:11:41 20 All right. My last key point of evidence you've  
10:11:45 21 heard a little bit about already. The Voxer technology and  
10:11:47 22 patents was not right for Facebook or anyone else in the  
10:11:51 23 industry. Let's go back to our timeline now.

10:11:57 24 After Facebook Live launched in 2015, Mr. Katis  
10:12:00 25 offered to sell or license, but Facebook said we are not

10:12:08 1 interested. We're doing something different than what your  
10:12:10 2 patents provide. Voxer went to the market in 2016 and '17, and  
10:12:15 3 they made an effort, a big effort, to sell their technology or  
10:12:18 4 license it. They hired bankers. They had their -- their  
10:12:25 5 technology valued. They went to the market. But it turns out  
10:12:29 6 nobody in the market was interested.

10:12:32 7 This is a partial list of the nearly 100 companies  
10:12:36 8 that Voxer attempted to market its technology to. And you can  
10:12:41 9 see this is the -- this is who's who, right? This is Cisco,  
10:12:45 10 this is Google, this is Qualcomm, this is IBM, this is Yahoo,  
10:12:51 11 and so on and so forth. This isn't everybody.

10:12:55 12 But they hired bankers and valuation specialists, and  
10:13:02 13 those folks approached all these people. But not a single  
10:13:05 14 company, not one, has agreed to license or purchase Voxer's  
10:13:10 15 technology. It wasn't right for the industry. Why? It was  
10:13:14 16 really, really late. 2017 and 2018 are 20 years after, almost  
10:13:19 17 30 years, after this technology first became available.

10:13:24 18 Now, before the lawsuit started and before the  
10:13:27 19 parties were in court, Voxer actually had hired valuation  
10:13:33 20 specialists to value this technology and what it might be worth  
10:13:37 21 to Facebook Live and others, too. In other words, before there  
10:13:42 22 was a dispute, as part of their marketing, they hired folks to  
10:13:47 23 value their patents, all of them, to others. And you can see  
10:13:53 24 here this is created by a company called Houlihan Lokey in June  
10:14:00 25 of 2017, before the lawsuit.



10:14:02 1 And I've highlighted the line. They attempted to  
10:14:05 2 value Voxer's patent portfolio. And with respect to Facebook  
10:14:09 3 Live, they said -- this is Voxer's analyst, Voxer's hired  
10:14:15 4 valuation people -- it is worth between 5- and 22.9-million,  
10:14:18 5 all-in, all patents. That's the value of it to the market.  
10:14:25 6 Now, of course, even that is high because no one was willing to  
10:14:30 7 pay even that for this technology. But this is what Voxer  
10:14:38 8 believed its portfolio was worth based on the analyst that they  
10:14:44 9 retained to help them sell it.

10:14:46 10 There's another piece of evidence that occurred  
10:14:48 11 before the lawsuit in the marketplace. They offered to sell  
10:14:51 12 the whole company, including all the technology, to Twitter for  
10:14:55 13 less than \$20 million. This is an e-mail from a man named  
10:15:03 14 Quincy Smith. He worked at Code Advisors. They were a  
10:15:06 15 representative of Voxer trying to sell the company. And he is  
10:15:09 16 e-mailing a gentleman named Noto at Twitter and saying, "As a  
10:15:16 17 favor for me on Tom Katis and Voxer. Your team will not get  
10:15:19 18 it, but it's simple IP, less than 20 million and game changer."

10:15:25 19 So, again, before the lawsuit started, Voxer itself  
10:15:28 20 valued its technology, and all of it, at less than 20 million.  
10:15:32 21 And, again, that was high, because Twitter wasn't interested  
10:15:36 22 and neither was anyone else. That's why this \$174 million  
10:15:41 23 number you heard about is absolutely unrealistic, out of touch  
10:15:48 24 with the market evidence, and completely unreasonable. Even  
10:15:55 25 if -- even if you found infringement, their position on money

10:15:58 1 is way out of line, because the marketplace evidence is that  
10:16:02 2 the whole company was offered for less than 20 million, their  
10:16:08 3 own valuation of the entire portfolio is in range of 5 to 22,  
10:16:13 4 and here they are now asking you for that enormous sum of  
10:16:16 5 money.

10:16:17 6 Now, before I sit down, I want to just introduce some  
10:16:22 7 of the folks on my team that you'll be hearing from. And so  
10:16:31 8 I'll start with Mike Jones that you heard from yesterday. He  
10:16:34 9 was the one asking the questions. Christa Anderson, David  
10:16:38 10 Silbert, Gene Paige, Paven Malhotra, and our client  
10:16:41 11 representative John Poffenberger. And I can't leave out our  
10:16:44 12 trusty legal assistants Brent Haugeberg and Laura Lind, who are  
10:16:46 13 going to help us keep track of all the documents and everything  
10:16:49 14 else that's coming along.

10:16:51 15 So I'll say thank you again. But before I sit down,  
10:16:54 16 I want to echo something that Judge Yeakel said yesterday, and  
10:17:00 17 that is: Please keep an open mind as you listen to the  
10:17:04 18 evidence, because since Voxer is the plaintiff, they get to go  
10:17:10 19 first, they have the burden of proof on infringement and so on  
10:17:14 20 and so forth, and so they get the opportunity to go first. Our  
10:17:17 21 presentation will be later in the week, so please keep an open  
10:17:20 22 mind until you've heard all the evidence.

10:17:22 23 And thanks once again for your time and attention and  
10:17:26 24 for being here to help us. Thank you.

10:17:30 25 THE COURT: Thank you. Ladies and gentlemen, this is

10:17:33 1 a convenient stopping point for our morning recess. We'll be  
10:17:36 2 in recess for 15 minutes.

18:00:00 3 (Jury recessed)

10:17:40 4 THE COURT: All right. You may be seated and be at  
10:17:42 5 ease for just a moment before we take our recess. I want to  
10:17:46 6 get the notebooks we've been discussing distributed to the  
10:17:51 7 jurors at this point as the evidence begins. I'm going to go  
10:17:55 8 ahead and do what I suggested that I might do yesterday. We  
10:17:58 9 will include the two patents, the asserted patent claims, and  
10:18:43 10 the verdict form, but I'm going to omit the jury instructions  
10:18:47 11 from the notebooks. They're lengthy. I don't have a problem  
10:18:51 12 with them, but I'm afraid that the jury will get involved in  
10:18:55 13 reading the jury instructions and not be involved in listening  
10:18:59 14 to you-all as they should be. And I'll have plenty of time to  
10:19:04 15 read them the instructions, and they can have them at the end.

10:19:06 16 Does anybody have great outcry of not doing it that  
10:19:09 17 way?

10:19:09 18 MR. VAN NEST: We don't have any outcry, Your Honor.

10:19:11 19 THE COURT: How about from the plaintiff? You all  
10:19:13 20 right with that?

10:19:14 21 MR. STONE: We are, Your Honor.

10:19:14 22 THE COURT: Okay. Then let's get those ready so the  
10:19:20 23 jurors can have them when they get back. And then is the  
10:19:23 24 plaintiff ready to call the plaintiff's first witness?

10:19:26 25 MR. STONE: We are, Your Honor.

10:19:27 1 THE COURT: All right. Then we'll be in recess is  
10:19:29 2 until a little after 10:30. Thank you-all.

18:00:00 3 (Recess)

10:19:37 4 (Open court, no jury)

10:19:38 5 THE COURT: Couple of quick things before we bring  
10:19:40 6 the jurors in. Before the plaintiff calls the plaintiff's  
10:19:42 7 first witness, I'm going to admit the exhibits that you-all  
10:19:45 8 have indicated in your joint notice of pre-admitted exhibits,  
10:27:20 9 although they're not pre-admitted because I haven't admitted  
10:28:51 10 them yet. They're soon to be pre-admitted.

10:36:13 11 And then I'm also, because I do this at the beginning  
10:36:15 12 of trial, I'm going to read your stipulated facts to the jury  
10:36:20 13 so they will already be in evidence. And what I'm not going to  
10:36:24 14 read, though, is in your stipulations over on H through N,  
10:36:28 15 which are priority dates, I'm not going to read for the purpose  
10:36:33 16 of this litigation because I think the jury knows it's for this  
10:36:38 17 litigation. And I know you did that so you're not waiving that  
10:36:41 18 for any other purpose, but I just rule right now, just because  
10:36:49 19 I'm not going to say that doesn't mean I'm admitting the  
10:36:56 20 stipulation for anything other than what we're doing in this  
10:36:59 21 courtroom the next two weeks.

10:37:00 22 MR. POWELL: Thank you, Your Honor.

10:37:01 23 MS. ANDERSON: Thank you, Your Honor.

10:37:03 24 THE COURT: Anything else we need to take up before  
10:37:03 25 we get the jury in?

10:37:03 1 MR. POWELL: Your Honor, the plaintiff does.

10:37:05 2 THE COURT: What?

10:37:05 3 MR. POWELL: The plaintiff does. May I be heard  
10:37:07 4 quickly?

10:37:08 5 THE COURT: Yes.

10:37:08 6 MR. POWELL: Okay. Sorry I'm starting to sound like  
10:37:12 7 a broken record, but we've got a couple of new songs to play  
10:37:15 8 this time. Opening the door on MIL 3, here are the three ways  
10:37:18 9 they did it in their opening. They said Voxer does not use its  
10:37:19 10 own video technology. The reason they don't use it, Facebook  
10:37:27 11 killed their business.

10:37:28 12 They say Facebook was able to build the video  
10:37:33 13 technology quickly. The way they did that, they stole it from  
10:37:36 14 Voxer.

10:37:37 15 Third, they said Twitter only offered 20 million.  
10:37:40 16 The reason they only offered 20 million, Facebook killed the  
10:37:44 17 business. How did they kill it? They removed us from the  
10:37:47 18 Facebook platform.

10:37:48 19 So we think they've opened the door. Mr. Katis  
10:37:50 20 should be allowed to testify that, following the conversations  
10:37:53 21 in March of 2012, Facebook went silent, Zuckerberg went to  
10:37:56 22 China, decided to copy, they built their own competing system,  
10:38:00 23 they came back in January, launched it, and killed Voxer.

10:38:03 24 THE COURT: All right. I'm going to review the reply  
10:38:06 25 brief I get in the morning at 9:00. I'll get it at 9:00. I'm

10:38:09 1 going to review it. At sometime either in the morning recess,  
10:38:14 2 because I might read it if I think the witnesses are  
10:38:16 3 particularly boring after I get it. Otherwise, I won't read it  
10:38:20 4 until the recess. And I will set an argument. And if I allow  
10:38:23 5 the testimony, you'll be allowed to recall your witness and  
10:38:27 6 develop it.

10:38:27 7 MR. POWELL: Thank you, Your Honor. Two other small  
10:38:29 8 issues. Motion in Limine Number 1 had to do with excluding  
10:38:34 9 reference *inter partes* reviews that were filed as to the  
10:38:39 10 patents-in-suit. The defense raised in their opening that  
10:38:46 11 Seckin was not considered by the patent office. They had every  
10:38:49 12 opportunity to present Seckin to the patent office in their  
10:38:52 13 *inter partes* review. They chose not to. We are now, I believe  
10:38:55 14 fairness dictates, entitled to tell them about the IPR and  
10:38:58 15 Facebook's choice, conscious choice, not to present that to the  
10:39:00 16 patent office. They participated in the prosecution history of  
10:39:04 17 this patent.

10:39:04 18 THE COURT: Response?

10:39:05 19 MR. VAN NEST: Your Honor, I don't think Mr. Katis is  
10:39:07 20 going to be talking about that. Frankly, that's the first I've  
10:39:11 21 heard that that's somehow opening the door. Seckin wasn't in  
10:39:15 22 the IPR. It wasn't a part that was presented to the patent  
10:39:18 23 office. It wasn't something the patent office considered. And  
10:39:21 24 the basis of --

10:39:22 25 THE COURT: I didn't think we got into what was said

10:39:26 1 to the IPR. We got the Seckin patent as not having been  
10:39:30 2 considered in the first instance by the PTO --

10:39:32 3 MR. VAN NEST: That's all I said.

10:39:34 4 THE COURT: -- when the Voxer patents were up. So  
10:39:36 5 that's overruled at this point.

10:39:39 6 MR. POWELL: We'll see what the evidence shows,  
10:39:41 7 Your Honor.

10:39:41 8 THE COURT: We will see what the evidence shows.

10:39:42 9 MR. POWELL: The other request would be for leave to  
10:39:44 10 submit a proposed jury instruction clarifying what the meaning  
10:39:52 11 of a priority date is. Obviously, the defense is trying to  
10:39:55 12 confuse the jury as to what it means.

10:39:56 13 THE COURT: No. Wait a minute. I can go along with  
10:40:00 14 you on your arguments and examine them on the merits. I don't  
10:40:03 15 want you to hear you say things to me like obviously what the  
10:40:06 16 defense is trying do.

10:40:07 17 MR. POWELL: Okay.

10:40:08 18 THE COURT: I tried a lot of cases, not patent cases,  
10:40:11 19 as a lawyer. Don't give me the lawyer banter about being  
10:40:15 20 critical of one another. Give me what your argument is. I can  
10:40:17 21 draw my own conclusions as to who I think is overreaching at  
10:40:19 22 any given point.

10:40:20 23 MR. POWELL: Thank you, Your Honor.

10:40:22 24 THE COURT: Now, give me the gist of your argument.

10:40:24 25 MR. POWELL: We believe that the jury is being led to

10:40:26 1 believe that the filing of the two patents-in-suit in 2018  
10:40:32 2 means that the Facebook systems that were launched in 2016 are  
10:40:40 3 themselves prior art to the patents. We think it's going to be  
10:40:43 4 important to explain that continuation patents such as we have  
10:40:47 5 here are deemed to have been filed in 2008 when the original  
10:40:50 6 application was filed, and they get the benefit of that  
10:40:55 7 priority. And it needs to be explained to the jury that, even  
10:40:59 8 though the products came out before these patents were filed,  
10:41:02 9 they're deemed to have been filed earlier.

10:41:04 10 THE COURT: I've got a whole group of smart people  
10:41:06 11 sitting out here in front of me. Take one of the smart people  
10:41:09 12 from each side and have them discuss whether you can come up  
10:41:11 13 with some agreed language for the Court's Charge.

10:41:13 14 MR. POWELL: We'd be happy to do that. Thank you,  
10:41:18 15 Your Honor.

10:41:18 16 THE COURT: All right. Now are we ready for the  
10:41:19 17 jury?

10:41:20 18 MR. STONE: Yes, Your Honor.

10:41:20 19 THE COURT: Bring in the jury.

10:41:23 20 (Open court, jury present)

10:41:23 21 THE COURT: Ladies and gentlemen of the jury, you'll  
10:41:24 22 notice the notebooks that we've been referring to for your use  
10:41:28 23 during the trial are on your chairs. Those are your notebooks.  
10:41:31 24 You can mark on them. You can do whatever you want to.  
10:41:34 25 There's nothing magic with it. You can search your notes in



10:41:37 1 there. They will be taken up at the end of the trial. They  
10:42:30 2 are not souvenirs of the trial. They are for you to use during  
10:42:33 3 this trial.

10:42:33 4 Before the plaintiffs call the plaintiff's first  
10:42:36 5 witness, you've heard me in giving instructions to you talk  
10:42:39 6 about things that you must accept as evidence, one of those  
10:42:43 7 being anything that the parties have stipulated to. The  
10:42:47 8 parties have stipulated to certain facts in this case. I'm  
10:42:51 9 going to read them to you, and you will take these facts as  
10:42:55 10 true as if you heard evidence on them.

10:42:57 11 1. This court has jurisdiction over the parties and  
10:43:02 12 all claims and defenses in this action.

10:43:04 13 2. Voxer is a Delaware -- Voxer, Inc. is a Delaware  
10:43:08 14 corporation with its principal place of business at 199 Brian  
10:43:12 15 Street, Suite 900, Dallas, Texas 75201-3140.

10:43:19 16 3. Voxer IP, LLC is a Delaware limited liability  
10:43:24 17 company and the legal owner by assignment of the asserted  
10:43:29 18 patents. Voxer IP, LLC is a wholly owned subsidiary of  
10:43:36 19 Voxer, Inc.

10:43:38 20 4. Meta Platforms, Inc. formally known as Facebook,  
10:43:44 21 Inc., is a Delaware corporation with a principal place of  
10:43:48 22 business at 1601 Willow Road, Menlo Park, California.

10:43:53 23 5. Instagram, LLC is a Delaware limited liability  
10:43:57 24 company and a wholly owned subsidiary of Meta Platforms, Inc.

10:44:04 25 6. Defendants Meta Platforms, Inc., formally known

10:44:09 1 as Facebook, Inc., and Instagram, LLC own and operate the  
10:44:13 2 facebook.com and instagram.com websites and make available the  
10:44:20 3 Facebook Live and Instagram Live services, as well as the  
10:44:23 4 Facebook and Instagram applications for mobile devices.

10:44:28 5 7. The application leading to the '030 patent was  
10:44:34 6 filed February 15th, 2008, and the '030 patent was issued  
10:44:44 7 May 15th, 2012 by the U.S. Patent Office.

10:44:48 8 8. The '030 patent is entitled to a priority date of  
10:44:57 9 no earlier than June 28th, 2007.

10:45:00 10 9. The application leading to the '969 patent was  
10:45:06 11 filed April 6th, 2016, and the '969 patent was issued on  
10:45:13 12 April 25th, 2017 by the U.S. Patent Office.

10:45:18 13 10. The '969 patent is entitled to a priority date  
10:45:23 14 of no earlier than June 28th, 2007.

10:45:29 15 11. The application leading to the '270 patent was  
10:45:34 16 filed on May 2nd, 2017, and the '270 patent was issued on  
10:45:41 17 November 28th -- pardon me -- November 27th, 2017 by the U.S.  
10:45:46 18 Patent Office.

10:45:48 19 12. The '270 patent is entitled to a priority date  
10:45:53 20 of no later than June 28th, 2007.

10:45:56 21 13. The application leading to the '557 patent was  
10:46:01 22 filed on October 16th, 2018, and the '557 patent was issued on  
10:46:08 23 December 17th, 2019 by the U.S. Patent Office.

10:46:12 24 14. The '557 patent is entitled to a priority date  
10:46:18 25 of no earlier than June 28th, 2007.

10:46:22 1 15. On January 7th, 2020, Voxer filed this patent  
10:46:28 2 infringement action against Defendant.

10:46:30 3 At this time the plaintiff may -- well, pardon me.  
10:46:35 4 Also I'm going admit for your consideration at this time  
10:46:40 5 certain exhibits.

10:46:50 6 The following exhibits are admitted into evidence:

10:46:53 7 P-3, P-4, P-5, P-6, P-17, P-18, P-19, P-44, P-47,  
10:47:10 8 P-54, P-145, P-402, P-433, P-542, P-556, P-679, P-681, P-737,  
10:47:21 9 P-743, P-744, P-746, P-752, P-784, P-802, P-803 P-804, P-827,  
10:47:38 10 and P-828.

10:47:40 11 In addition, the following exhibits are admitted into  
10:47:48 12 evidence:

10:47:49 13 DTX98, DTX154, DTX155, DTX156, DTX162, DTX163,  
10:48:06 14 DTX164, DTX165, DTX166, DTX167, DTX171, DTX172, DTX185, DTX215,  
10:48:25 15 DTX233, DTX234, DTX249, DTX276, DTX438, DTX440, DTX607,  
10:48:40 16 DTX607-A, DTX607-B, DTX607-C, and DTX-618.

10:48:52 17 Now the plaintiff may call the plaintiff's first  
10:48:55 18 witness.

10:48:55 19 MR. STONE: Your Honor, the plaintiff calls  
10:48:57 20 Thomas Katis.

10:48:59 21 (Witness sworn)

10:48:59 22 \*\*\*\*\*

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10:48:59 1 **THOMAS KATIS,**

10:48:59 2 having been first duly sworn, testified as follows:

10:48:59 3 **DIRECT EXAMINATION**

10:48:59 4 **BY MR. STONE:**

10:48:59 5 Q. Good morning, sir.

10:49:00 6 A. Good morning.

10:49:02 7 Q. Would you please introduce yourself to the court and the

10:49:06 8 jury.

10:49:07 9 A. Sure. Thomas Katis, but everybody calls me "Tom."

10:49:11 10 Q. And where you do currently live?

10:49:17 11 A. Jackson Wyoming.

10:49:17 12 Q. And how long have you lived in Wyoming?

10:49:20 13 A. About 17 years.

10:49:21 14 Q. And let's go back a few years to acquaint the jury how we

10:50:02 15 got here.

10:50:02 16 Before Wyoming, where did you grow up?

10:50:03 17 A. I was born in New York, but I grew up mostly in

10:50:08 18 Connecticut.

10:50:08 19 Q. And what did you do after high school?

10:50:10 20 A. I enlisted in the Army.

10:50:12 21 Q. When did you do that?

10:50:13 22 A. March of 1988, and I served through '89 and '90.

10:50:17 23 Q. And what did you do after you enlisted?

10:50:19 24 A. Well, my first enlistment basically included basic

10:50:23 25 training, advance individual training in communications,

10:50:24 1 Airborne school, basic noncommissioned officer course, Special  
10:50:27 2 Forces selection assessment, Special Forces qualification  
10:50:30 3 course, and SERE school.

10:50:31 4 Q. And what was your focus in Special Forces?

10:50:34 5 A. So every Green Beret has to have one of four specialties.  
10:50:42 6 Everyone is either a weapons specialist or an engineer or medic  
10:50:47 7 or communications. And based on my initial aptitude testing,  
10:50:52 8 they encouraged me to go into communications, which I did.

10:50:56 9 Q. And as a communications sergeant, what were you  
10:50:59 10 responsible for?

10:51:01 11 A. Everything on the team that involved any type of  
10:51:04 12 electronics or communications of any type.

10:51:08 13 Q. Could you give the jury some examples, please.

10:51:13 14 A. Sure. So I mean, obviously, programming and operating  
10:51:17 15 radios, calling everything from close air support, medevac,  
10:51:20 16 coordinating with other units. The -- I learned everything  
10:51:24 17 from intent theory to, you know, how to use all the different  
10:51:27 18 types of frequencies, HF, UHF, VHF, sat-com, cryptography, a  
10:51:33 19 lot of different systems.

10:51:34 20 Q. Now, when did you leave your first stint?

10:51:36 21 A. At the end of 1990.

10:51:38 22 Q. And what did you do then?

10:51:40 23 A. I went to college.

10:51:42 24 Q. And where did you go?

10:51:43 25 A. I started at the University of North Carolina at

10:51:46 1 Charlotte. And after a year I applied to Yale and was  
10:51:50 2 fortunate enough to get in.

10:51:51 3 Q. And what did you study at Yale?

10:51:53 4 A. I applied for a selective major that was called ethics,  
10:51:59 5 politics, and economics, and I did my senior thesis on the  
10:52:03 6 implications of European monetary theory.

10:52:07 7 Q. And did you receive -- did you receive a degree.

10:52:08 8 A. Yes, I did. A bachelor of arts in 1994.

10:52:12 9 Q. And what did you do after Yale?

10:52:14 10 A. My first job after college I was a foreign exchange trader  
10:52:16 11 for Citicorp.

10:52:17 12 Q. And what was your work like in that role?

10:52:20 13 A. So trading is quite an electronic technical activity and  
10:52:24 14 pretty high-paced and high-stressed. So I was -- I became a  
10:52:26 15 senior dealer and managed a book for the bank. But, in  
10:52:30 16 addition, I really liked playing with the terminals, and I  
10:52:36 17 helped the team reprogram all of our terminals for more  
10:52:44 18 efficient call outs and effectiveness of the whole team.

10:52:47 19 Q. Now, did your position at Citicorp change at some time?

10:52:49 20 A. It did. This is mid '90s, and so, you know, Netscape came  
10:52:54 21 out, and all of sudden the Internet was sort of a thing. And  
10:52:57 22 I, you know, was sort of drawn to it like a moth to a flame.  
10:53:00 23 And, you know, the bank wasn't really moving too quickly in the  
10:53:05 24 area, and so some friends and I sort of agitated and eventually  
10:53:09 25 ended up -- four of us ended founding the Internet group at

10:53:13 1 Citicorp.

10:53:13 2 Q. And what kind of work did you do in that group?

10:53:15 3 A. I ended up in charge of Internet payment systems for the  
10:53:20 4 bank.

10:53:20 5 Q. And in that role what kind of work did you perform?

10:53:23 6 A. So I led -- I led a number of pilots and programs with  
10:53:28 7 different technology companies. I worked with a bunch of  
10:53:32 8 companies that were digicash, cybercash, transactor networks,  
10:53:36 9 et cetera. We did programs in e-cash, in secure transaction  
10:53:38 10 protocols, and --

10:53:39 11 THE COURT: Mr. Katis, can I ask you a question --

10:53:43 12 THE WITNESS: Yes.

10:53:44 13 THE COURT: -- a request. Please just slow down just  
10:53:46 14 a little bit. You can talk faster than I can hear.

10:53:49 15 THE WITNESS: Okay. I'm sorry. I'm excited to be  
10:53:53 16 here.

10:53:53 17 Q. (BY MR. STONE) How long were you in that role at Citicorp?

10:53:56 18 A. Until March of '99.

10:54:00 19 Q. And what did you do when you left Citicorp?

10:54:04 20 A. I joined a small startup company out in Silicon Valley  
10:54:07 21 called Netcentives.

10:54:07 22 Q. And which kind of business was Netcentives?

10:54:09 23 A. Netcentives was a company that was focused on, like,  
10:54:11 24 one-to-one digital marketing systems. We did points-based  
10:54:16 25 programs and e-mail direct marketing.

10:54:20 1 Q. And what was your title there?

10:54:23 2 A. Vice-president of business development.

10:54:28 3 Q. How long were you there, sir?

10:54:32 4 A. I was there until shortly before I re-enlisted in the Army  
10:54:36 5 after 9/11.

10:54:37 6 Q. And why did you re-enlist?

10:54:40 7 A. I mean, multiple reasons. You know, I'm originally from  
10:54:43 8 New York. I had a friend who was killed in the attacks. And,  
10:54:48 9 you know, 9/11 was kind of a Pearl Harbor type moment, and I  
10:54:52 10 recognized that, because Al Qaeda that was in the mountains of  
10:54:57 11 Afghanistan, the types of individuals they would need was --  
10:55:00 12 was Green Berets, Special Forces. It was exactly the type of  
10:55:04 13 training and capabilities that I had been trained for.

10:55:07 14 And I also knew that, you know, it takes years to  
10:55:11 15 create new Green Berets. It takes years to recruit and train  
10:55:16 16 and deploy Special Forces personnel. And so I thought I could  
10:55:20 17 sort of plug a gap.

10:55:21 18 Q. Now, where were you deployed, sir?

10:55:25 19 A. Afghanistan.

10:55:26 20 Q. And over what time period?

10:55:27 21 A. From summer of '02 through spring of '03.

10:55:32 22 Q. And what kind of work were you performing there?

10:55:34 23 A. Well, I was -- I was a communications sergeant on a  
10:55:40 24 Special Forces team. And more specifically while I was there,  
10:55:46 25 I became very involved with standing up an Afghan special



10:55:48 1 forces unit.

10:55:49 2 Q. What kind of work was the Afghan special forces unit  
10:55:54 3 doing?

10:55:54 4 A. It was referred to as a CTPT or counterterrorist pursuant  
10:55:59 5 team. Basically, it was an indigenous unit that you we sort of  
10:56:07 6 hand picked from the across the region, put them through our  
10:56:10 7 own training, and we'd lead them on long-range missions. And  
10:56:16 8 the idea, I mean, this was basically straight out of sort of  
10:56:19 9 the Unconventional Warfare Doctrine.

10:56:21 10 You know, we knew that we would be going into  
10:56:22 11 villages where they never met an American before, never met a  
10:56:29 12 European, never met anybody who wasn't from the area. And we  
10:56:32 13 knew that if we walked in with a platoon of Rangers all in  
10:56:36 14 Kevlar and helmets, we'd look like invading Martians or  
10:56:41 15 something. And so we tried to soften our image. And so  
10:56:44 16 instead of going in in force, we'd go with two or three  
10:56:48 17 Americans. We'd typically go with a force of 12 to 15 Afghans  
10:56:53 18 that we trained up. And that way as we walked into these  
10:56:56 19 villages, it was -- it was an easier thing for them to -- to  
10:57:01 20 welcome us and to talk with them and get to know them and build  
10:57:05 21 relationships across the area.

10:57:08 22 Q. Now, let me show you what we have previously marked as  
10:57:12 23 Exhibit P-426, and it should be on the screen in front of you.

10:57:16 24 A. Okay. Not yet.

10:57:17 25 Q. Mr. Katis, do you recognize P-426?

10:57:19 1 A. It was up a second ago.

10:57:21 2 Q. It's going to be in front of you first. We're going to  
10:57:24 3 move to have it admitted.

10:57:24 4 THE COURT: Don't show an exhibit that the jury can  
10:57:25 5 see until I've admitted it.

10:57:26 6 MR. STONE: We understand that, Your Honor, and so it  
10:57:27 7 shouldn't up on any screens, just in front of the witness.

10:57:31 8 THE COURT: But that's all right. As long as it's  
10:57:32 9 not exhibited to the jury before you've offered it.

10:57:34 10 MR. STONE: Thank you, Your Honor.

10:57:35 11 Q. Mr. Katis, do you recognize Exhibit P-426?

10:57:40 12 A. Yes, I do.

10:57:40 13 Q. And what is that exhibit?

10:57:42 14 A. This is a picture of me on January 15th, 2003 in  
10:57:48 15 Afghanistan. I remember this day very clearly.

10:57:50 16 MR. STONE: And, Your Honor, we'd like to move  
10:57:52 17 Exhibit P-426 into evidence.

10:57:53 18 MS. ANDERSON: No objection, Your Honor. Thank you.

10:57:56 19 THE COURT: Plaintiff's Exhibit P-426 is admitted.

10:58:07 20 Q. (BY MR. STONE) Now, when was this picture taken, sir?

10:58:13 21 A. January 15 of 2003.

10:58:15 22 Q. And was this picture taken after some significant event?

10:58:21 23 A. Yes. This was right at the tail end of the biggest ambush  
10:58:26 24 we were in in Afghanistan. We had a vehicle blown up, and I  
10:58:33 25 had to medevac a couple of my teammates. We were stuck in a

10:58:37 1 kill zone for over two hours.

10:58:39 2 Q. Now, during your time in Afghanistan, did you receive any  
10:58:43 3 commendations?

10:58:44 4 A. I was awarded the Bronze Star.

10:58:47 5 Q. Did any of the inspiration behind Voxer come to you during  
10:58:51 6 your time there?

10:58:52 7 A. Yes. Very much so. And really specifically from this  
10:58:56 8 ambush and our frustrations with military communications during  
10:58:59 9 it.

10:58:59 10 Q. And could you explain how that inspiration developed?

10:59:02 11 A. Sure. So, you know, being the one primarily responsible  
10:59:07 12 for calling close air support, calling medevac, I had a team  
10:59:11 13 frequency for talking to my teammates and figuring out what was  
10:59:15 14 going on. I had to call for a quick reaction force, which was  
10:59:17 15 a nearby platoon of Rangers.

10:59:19 16 Q. And I would just slow down a little bit so the court  
10:59:22 17 reporter can get it all down.

10:59:23 18 A. So I had to call for a quick reaction force, which was a  
10:59:27 19 relatively nearby platoon of Rangers. I asked for some  
10:59:30 20 assistance. I had to keep my company commander up to date on  
10:59:33 21 what's going on. I had to keep the forward operating base and  
10:59:37 22 battalion command update.

10:59:38 23 And the way that military radios work is you're one  
10:59:41 24 channel at a time, sort of one frequency. And as soon as you  
10:59:45 25 flip, like if I flip from my team frequency to call close air

10:59:47 1 support, I'd have no idea what was going on on my team  
10:59:50 2 frequency. I'd miss everything. And you never get it back.  
10:59:55 3 And if somebody is trying to talk to me on my team, for  
10:59:59 4 example, I have no idea because I'm talking to ATAC.

11:00:02 5 And -- so it's a very brittle, static environment  
11:00:07 6 where you just -- you don't even know how much you're missing.  
11:00:10 7 And -- and so -- so that's sort of the inbound side. It's just  
11:00:13 8 you're missing tons of stuff, and you can tell just  
11:00:17 9 communication is sort of breaking all over the place.

11:00:19 10 And on the outbound side, every time I'd flip to a  
11:00:23 11 new frequency, let's say to call for medevac, there's always  
11:00:28 12 somebody talking on the channel. And only one person can speak  
11:00:32 13 at a time, and so I have to wait my turn and then exchange call  
11:00:37 14 signs, and then, you know, give the information, typically  
11:00:41 15 repeat it back or acknowledge. It's a very cumbersome process.

11:00:44 16 And then flipping back to my other channels trying  
11:00:48 17 to -- it just sort of repeats. This is cycle repeats itself  
11:00:51 18 again and again where I keep missing stuff. And, you know, I  
11:00:55 19 did the best I could, and I did everything as I was supposed to  
11:01:01 20 have done and everything worked out. But I just came out of  
11:01:06 21 that, especially after having -- having spent some time in  
11:01:08 22 Silicon Valley and being exposed to the world of software and  
11:01:12 23 computing and Internet, I just thought there has to be a better  
11:01:16 24 way.

11:01:16 25 Q. Okay. And we'll come back to this in a bit. How long

11:01:19 1 were you in the Army for your second enlistment?

11:01:21 2 A. I got out in the fall of 2003, two years after my  
11:01:26 3 re-enlistment.

11:01:27 4 Q. And did you form Voxer immediately after you were  
11:01:30 5 discharged?

11:01:31 6 A. No, I did not.

11:01:32 7 Q. What did you do first?

11:01:33 8 A. I founded a company called Triple Canopy.

11:01:35 9 Q. And what did you do there?

11:01:36 10 A. So Triple Canopy was a high-threat security firm. And,  
11:01:40 11 basically, while I was in Afghanistan, I was unaware that this  
11:01:45 12 industry existed, but there were a few times traveling around  
11:01:48 13 the country where I would run into private security guards,  
11:01:50 14 typically Blackwater or some other firm. And I -- they weren't  
11:01:55 15 always the best of interactions, and I would ask my friends,  
11:01:59 16 you know, I bumped into some friends, that I had known from  
11:02:04 17 Special Forces previously who had gone over to the private  
11:02:07 18 contracting side, and I would ask them what's going on.

11:02:11 19 And so I learned about this industry, and the sense  
11:02:16 20 that I got from all my friends was that, for various reasons,  
11:02:22 21 this is an important industry that needed to exist. You know,  
11:02:25 22 the -- the State Department, like any -- like any other foreign  
11:02:27 23 service, is not allowed to be protected by the military,  
11:02:30 24 generally. This is a body of law called SOFA, Status of Forces  
11:02:35 25 Agreements. And so it's every city -- every major city doesn't

11:02:38 1 become a militarized zone. Otherwise, every time the Russian  
11:02:40 2 Ambassador went to New York, he would have Russian military and  
11:02:42 3 the Chinese Ambassador would have Chinese military and every  
11:02:46 4 city would be a military zone. And so it's prohibited by law.

11:02:53 5 And then -- but as soon as Al Qaeda sort of showed up  
11:02:57 6 on the scene and started targeting airplanes and Embassies and  
11:03:03 7 diplomats, the State Department realized they needed a much  
11:03:06 8 more muscular private security, and so they started looking to  
11:03:09 9 private firms to hire former Special Forces personnel.

11:03:12 10 Q. And so why did you form Triple Canopy?

11:03:15 11 A. Because it was clear there was a real need. The -- the --  
11:03:20 12 all my friends in the community felt that something had been  
11:03:22 13 lost in translation going from elite military units with a  
11:03:28 14 certain cultural and ethics over in the private sector, which  
11:03:32 15 was sort of the wild west. And there were all sorts of  
11:03:35 16 incidents that were happening that were working very contrary  
11:03:39 17 to our foreign policy interests.

11:03:40 18 Q. Now, ultimately, was Triple Canopy successful?

11:03:44 19 A. It was.

11:03:47 20 Q. What happened to Triple Canopy?

11:03:50 21 A. Well, one of the metrics by which I judge Triple Canopy  
11:03:53 22 being successful is that you don't hear about the industry  
11:03:56 23 anymore. It used to be you heard about this industry all the  
11:03:58 24 time because of bad things that would happen. And that -- you  
11:04:04 25 know, I attributed that to lack of discipline and ethics and

11:04:07 1 professionalism, and I feel like we really significantly raised  
11:04:11 2 the bar in the industry and transformed the industry.

11:04:13 3 And -- and because of that, we continued to get  
11:04:16 4 contracts and continued to grow. And 13 years later, it went  
11:04:19 5 from me and my cofounder to over 11,000 employees and over a  
11:04:23 6 billion in revenue and we sold the company.

11:04:25 7 Q. Now, did you have any communication challenges at Triple  
11:04:28 8 Canopy?

11:04:29 9 A. Of course. I mean, we were -- every company always has  
11:04:34 10 communications challenges, and we had some particularly  
11:04:38 11 challenging ones. You know, we were trying to roll out  
11:04:42 12 across -- our initial contracts, we were across twelve  
11:04:45 13 different sites in Iraq in the middle of a war. And you can't  
11:04:49 14 sort of call up your local cable provider and just sort of have  
11:04:53 15 them set everything up for you.

11:04:55 16 And, you know, I knew that I wanted to have a modern,  
11:05:02 17 high-performance, you know, communications environment for the  
11:05:06 18 company, and I knew I needed to do that via satellite. And so  
11:05:10 19 I knew that there was a -- there were a bunch of things we  
11:05:13 20 needed to do to make that work properly.

11:05:16 21 Q. So what did you do to build out that network for yourself  
11:05:19 22 in Iraq?

11:05:20 23 A. Well, the first thing I did was I -- I reached out to a  
11:05:24 24 friend of mine in Silicon Valley who had worked with  
11:05:27 25 Netcentives who was a brilliant networking engineer that I

11:05:29 1 knew. He was busy with his own startup, but he said I know the  
11:05:33 2 perfect guy for you, and he introduced me to Matt Ranney, who  
11:05:37 3 become my cofounder of Voxer.

11:05:39 4 And we talked on the phone, hit it off immediately,  
11:05:42 5 hired him that day, and we got to work. The next day he flew  
11:05:46 6 in and we got to work building out the network that we needed.

11:05:50 7 Q. Now, did you start any companies after starting Triple  
11:05:53 8 Canopy?

11:05:54 9 A. Yes. Voxer.

11:05:55 10 Q. And why did you found Voxer?

11:05:56 11 A. So, you know, Voxer originates out of the frustration I  
11:06:02 12 had with military communications. And when I started working  
11:06:07 13 with Matt at Triple Canopy and we were building out, we could  
11:06:11 14 buy anything we wanted in terms of communications gear. We  
11:06:15 15 could buy any military radios, we could buy any, you know,  
11:06:23 16 enterprise commercial, you know, equipment.

11:06:25 17 And it was clear that even though we were doing  
11:06:29 18 everything to the highest standards, you know, and everything  
11:06:33 19 was working, there was something missing. We were always like  
11:06:36 20 there's got to be -- there are certain problems that are just  
11:06:39 21 difficult, you know, trying to have a voice-over-IP call over  
11:06:43 22 satellite across multiple sites in Iraq, you know, from D.C.  
11:06:47 23 is -- you have challenges, you have issues. And just managing  
11:06:50 24 all the complexity of the operations, it was -- it was always  
11:06:55 25 a -- you know, we always just thought there must be something



11:06:58 1 more that we can build or do.

11:07:00 2           And it began a multiyear conversation between me and  
11:07:04 3 Matt Ranney, just sort of brainstorming about, you know, what  
11:07:07 4 are the gaps? What's missing? Why do we still -- why do we  
11:07:10 5 keep solving the same problems over and over again and it's  
11:07:13 6 never as good as we want it to be?

11:07:15 7 Q.   And did you come to some epiphany at some point in time  
11:07:19 8 about that?

11:07:20 9 A.   I did. I did very much. So it's kind of funny. I was at  
11:07:25 10 home in Wyoming, and I was just -- I don't know why, but I was  
11:07:29 11 having a little thought experiment in my head of, if I was back  
11:07:32 12 in that situation in the ambush scenario managing all those  
11:07:37 13 channels and if I could wave a magic wand and have a magic  
11:07:40 14 system that worked any way I wanted it to work, I thought, from  
11:07:44 15 a human standpoint, how would it want it to work?

11:07:46 16           And I thought, from a human standpoint, everyone who  
11:07:48 17 is trying to communicate with me I want to be able to pick. I  
11:07:54 18 don't want to be interrupted. I want to be able to pick where  
11:08:00 19 I'm live. And anything that is a lower priority than that, I  
11:08:03 20 want to be able to, you know, time-shift whatever amount that I  
11:08:07 21 want, you know, sort of like having a buffer in all of the  
11:08:11 22 inbound communication. And so I could sort of deal with what's  
11:08:14 23 most important and deal with what's second most important,  
11:08:16 24 third most important, and work my way through.

11:08:18 25           And so I sort of visualized having a system that, in

11:08:21 1 the same way that it's so easy to sort of go on an app, like a  
11:08:25 2 messaging app or something like that where, you know, you never  
11:08:28 3 feel sort of overwhelmed -- I mean, sometimes if you have a ton  
11:08:33 4 of messages, but even when you have a ton of messages, you can  
11:08:37 5 sort of pick which conversation you want to go to first. And  
11:08:40 6 you can deal with those things that are most important to you  
11:08:42 7 first, and you can ignore certain things for a while, knowing  
11:08:45 8 you're not going to miss them.

11:08:47 9 And I wanted that type of environment for live media,  
11:08:50 10 and it only existed for messaging. It didn't exist for  
11:08:53 11 anything live. So that's on the inbound side, right? I wanted  
11:08:57 12 something that was more elegant and less interruptive and  
11:09:00 13 intrusive.

11:09:01 14 And on the outbound side, I didn't want to ever have  
11:09:03 15 to wait. I didn't want to have to deal with waiting for people  
11:09:07 16 to stop speaking and call signs and repeating things back. And  
11:09:13 17 I wanted to be able to, you know, speak, and if people are  
11:09:16 18 listening, then they hear me live. And if for any reason they  
11:09:19 19 can't hear me live, whether that's because of their own  
11:09:22 20 attention, they're distracted by something else or whether  
11:09:25 21 that's because of some sort of network intermittency, they'll  
11:09:30 22 still get it.

11:09:31 23 Q. And what were your conclusions about what was wrong with  
11:09:37 24 existing communications?

11:09:38 25 A. Well, there was -- there was nothing in the existing, you

11:09:44 1 know, world of communications that could work that way. There  
11:09:48 2 were plenty of live systems. And, you know, it's -- there's --  
11:09:53 3 you know, TV has been around a long time. Live streaming, as  
11:09:58 4 they talked about in their opening, has been around a long,  
11:10:02 5 long time. We're not claiming to have invented live streaming.

11:10:06 6 The -- what I was trying to understand was how do we  
11:10:09 7 take these live things and incorporate them into sort of more  
11:10:15 8 of a messaging type of an environment or framework. So, you  
11:10:20 9 know, it's -- it's -- you know, I wanted to be able to have an  
11:10:23 10 interactive, organized live system, a system that is live but  
11:10:28 11 doesn't have to be, and -- and you can fall back on reviewing  
11:10:34 12 things later and/or forwarding things, et cetera.

11:10:38 13 Q. And did you write down information about your epiphany  
11:10:42 14 after you had it?

11:10:45 15 A. I did. I did.

11:10:48 16 Q. And let me show you -- this is not pre-admitted. Let me  
11:10:53 17 show you Plaintiff's Exhibit 157. Mr. Katis, do you recognize  
11:10:57 18 that on your screen?

11:10:59 19 A. Yes, I do.

11:11:00 20 Q. And, Mr. Katis, what do you recognize this to be?

11:11:04 21 A. This is basically after I had my sort of epiphany, you  
11:11:11 22 know, if I had a magic wand, what would it look like, you know,  
11:11:14 23 idea, I basically grabbed my laptop, and this is sort of stream  
11:11:18 24 of consciousness, typing things out.

11:11:20 25 MR. STONE: And, Your Honor, we'd like to have

11:11:22 1 Plaintiff's Exhibit 157 introduced into evidence.

11:11:25 2 MS. ANDERSON: Your Honor, for Meta, Meta does not  
11:11:28 3 object to the introduction of this particular exhibit as long  
11:11:31 4 it is not being offered for its truth because, if it is, it is  
11:11:33 5 hearsay statement. But if it's not being offered for its  
11:11:36 6 truth, we do not object and would request an instruction to the  
11:11:39 7 jury in that regard.

11:11:40 8 THE COURT: Mr. Stone?

11:11:40 9 MR. STONE: Your Honor, we believe it's a preliminary  
11:11:46 10 business document relating to Voxer's work, and it's actually a  
11:11:50 11 business record created by Mr. Katis.

11:11:53 12 THE COURT: Well, I'm going to admit it with this  
11:11:55 13 instruction to the jury: You are not to consider it for the  
11:11:58 14 truth of anything that's stated in it. The witness may be  
11:12:02 15 questioned by you, Mr. Stone. It is admitted merely to show  
11:12:05 16 that this is where he memorialized his thoughts after thinking  
11:12:09 17 about the matters that he's just testified to.

11:12:12 18 MR. STONE: Very well.

11:12:13 19 MS. ANDERSON: Thank you, Your Honor.

11:12:16 20 Q. (BY MR. STONE) Now, Mr. Katis, when did you prepare this?

11:12:18 21 A. October 4th of 2006.

11:12:21 22 Q. And do you have a timeline prepared to show the jury?

11:12:26 23 A. Yes, I do.

11:12:28 24 MR. STONE: Can we see that, please?

11:12:29 25 Q. And is this white paper reflected on the timeline?

11:12:34 1 A. Yes, it is. It might be a little bit confusing, in that  
11:12:44 2 when I first formed the business, I didn't know what to call  
11:12:47 3 it. And so I called it CommoTEK. T-E-K are my initials. And  
11:12:52 4 everybody hated the name, including me, and so we pretty  
11:12:56 5 quickly changed it. Unfortunately, we changed it to another  
11:13:00 6 name that nobody liked, which was RebelVox. And so you'll see  
11:13:03 7 the names CommoTEK and RebelVox on some things. They're all  
11:13:04 8 just Voxer. Those are just short-term temporary names we used  
11:13:08 9 while trying to find a name we all liked.

11:13:11 10 Q. And, Mr. Katis, what did you do next in time in connection  
11:13:14 11 with pursuing your ideas?

11:13:15 12 A. I reached out to Matt Ranney.

11:13:17 13 Q. And when did you do that?

11:13:19 14 A. Well, very quickly, but, you know, I really wanted to meet  
11:13:25 15 with him in person. And it took us until early January of 2007  
11:13:30 16 to meet in person.

11:13:31 17 Q. And what do you remember about your discussions with  
11:13:33 18 Mr. Ranney at that time?

11:13:34 19 A. It was actually kind of funny, because, like, I love  
11:13:37 20 technology but I am not engineer. And Matt is just an  
11:13:39 21 incredible networking engineer who thinks in a way that -- my  
11:13:41 22 brain is slightly different. And so you know this whole idea  
11:13:42 23 sort of came from a human standpoint: What do I want my  
11:13:45 24 interaction to be with the system?

11:13:46 25 And I understood some of, you know, how the existing

11:13:49 1 systems worked, but I wasn't an expert in these things. And so  
11:13:59 2 I reached out to Matt, and I explained the way I wanted it to  
11:14:07 3 work. And he just said, Well, it doesn't work that way. And I  
11:14:16 4 said -- I said, I know. I know. But, like, you know, could  
11:14:20 5 it? Could we build a system that works this way? And he kept  
11:14:24 6 saying, Well, but it doesn't. And he tried to explain to me  
11:14:27 7 how live systems and messaging systems, they sort of teach away  
11:14:29 8 from each other.

11:14:30 9 MS. ANDERSON: Objection, Your Honor. The witness is  
11:14:31 10 testifying as to hearsay. Move to strike.

11:14:33 11 THE COURT: Sustained.

11:14:34 12 MR. STONE: Very well. I'll move on.

11:14:36 13 Q. Did, ultimately, you and Mr. Ranney decide to form Voxer?

11:14:40 14 A. Yes. It was a little bit of an interesting conversation.  
11:14:44 15 It was fun, but it was sort of one of those that made your  
11:14:48 16 brain hurt a little bit. But after -- after a couple of hours,  
11:14:53 17 I think we were both sufficiently in a place where we were,  
11:14:59 18 like, let's give it a shot.

11:15:01 19 You know, if we can build a system that has these  
11:15:05 20 attributes, you know, because live systems work in a certain  
11:15:09 21 way. You know, as you said in your opening, you don't start  
11:15:13 22 speaking on a phone call or when you key a push-to-talk button  
11:15:16 23 on a radio, no media, no content is created prior to when  
11:15:21 24 you -- prior to having everything set up. Like you have to  
11:15:25 25 have -- the person has to pick up on the other end or the

11:15:29 1 walkie-talkie has to blare out of the speaker. And you start  
11:15:33 2 speaking and it's live only, and if you miss anything, it's  
11:15:36 3 gone forever.

11:15:37 4           Whereas in a messaging system, it works in a  
11:15:41 5 completely different way. Nothing is set up. You can be on  
11:15:44 6 your laptop or on your phone composing an e-mail. Your phone  
11:15:48 7 has no idea what the e-mail -- it's not trying to look up or  
11:15:51 8 set up a connection while you're typing stuff. And it's after  
11:15:54 9 you've composed it and attached it, the video or picture or  
11:15:58 10 whatever, when you hit "send," then it starts to figure out how  
11:16:01 11 to take that totally non-live data and get it to wherever it  
11:16:05 12 needs to get to.

11:16:06 13           So we were trying to build a system that had the best  
11:16:09 14 attributes of both, which begs the question of where do you  
11:16:11 15 start? Do you start with a live system, or do you start with a  
11:16:14 16 messaging system?

11:16:15 17 Q. Now, Mr. Katis, let me show you what has been pre-admitted  
11:16:18 18 Exhibits P-827 and P-828.

11:16:21 19           MR. STONE: And, Mike, if we could display those side  
11:16:22 20 by side.

11:16:23 21 Q. Mr. Katis, do you recognize these photos?

11:16:25 22 A. Yes. I apologize for my posture.

11:16:27 23 Q. And what are these photos of?

11:16:29 24 A. This was early sort of white boarding and sort of, you  
11:16:33 25 know, a deep dive on -- this is in my house in Jackson,

11:16:37 1 Wyoming. And we were -- you can, you know, a white board  
11:16:40 2 there. You can see a bunch of big paper tear-offs. And  
11:16:44 3 we're -- we're trying to do a deep dive and understanding what  
11:16:47 4 is this -- what is this idea? How deep does it go? And just  
11:16:52 5 trying to understand the logic behind it.

11:16:55 6 You know, you sort of have to go from logic into,  
11:16:58 7 well, how would we build it. And then you -- it's after you  
11:17:01 8 get those steps, and then you start talking about patents and  
11:17:05 9 whatnot.

11:17:06 10 Q. And is that you in the picture on the right?

11:17:09 11 A. That is.

11:17:10 12 Q. And who is on the picture on the left?

11:17:13 13 A. Matt Ranney on the left and Jim Panttaja.

11:17:16 14 Q. And you mentioned Mr. Ranney joined Voxer. Did  
11:17:18 15 Mr. Panttaja join Voxer?

11:17:19 16 A. Yes. Jim Panttaja and his wife Mary both joined Voxer.

11:17:23 17 Q. And what were their roles?

11:17:25 18 A. So I had met them both at Netcentives. They're both  
11:17:27 19 talented engineers. Jim was a very good leader of engineers  
11:17:31 20 and developers, good at building products. And Mary was more  
11:17:35 21 of a jack-of-all-trades. She worked with me at Netcentives  
11:17:41 22 typically as a sales engineer. And they both, you know, dove  
11:17:45 23 in and really helped us to figure this stuff out.

11:17:50 24 Q. Now, were there any other early employees at Voxer?

11:17:52 25 A. Yes. Jim Rose.



11:17:54 1 Q. When did Mr. Rose join Voxer?

11:17:55 2 A. From the beginning. I started talking with him as I was

11:18:00 3 forming the company.

11:18:00 4 Q. And what was his role?

11:18:03 5 A. He was our in-house patent counsel.

11:18:06 6 Q. What kind of work did he do?

11:18:08 7 A. You know, he was the expert on intellectual property

11:18:12 8 production and patents, and so he advised us on sort of the

11:18:16 9 correct process to follow in terms of filing patents.

11:18:19 10 Q. And what was the process that you followed?

11:18:22 11 A. Well, it involved obviously a lot of discipline about

11:18:26 12 documenting everything, which we did rigorously. But then on

11:18:30 13 top of that, he would encourage all the time and remind us all

11:18:35 14 the time of the need for an aggressive prior art searching.

11:18:38 15 Q. And you mentioned prior art. What does that mean?

11:18:41 16 A. It just basically means searching as hard as you can to

11:18:46 17 try to find anything like what you're trying to patent. Has

11:18:51 18 anybody done anything -- have they done this before, anything

11:18:54 19 like this, what are the boundaries of what people have done

11:18:58 20 before.

11:18:58 21 Q. And what did you learn through that process?

11:19:00 22 A. That no one had done this before.

11:19:02 23 Q. And did you do anything as a result of coming to that

11:19:06 24 conclusion?

11:19:06 25 A. Yes. I mean, we set about building the business and

11:19:10 1 documenting and moving forward.

11:19:11 2 MR. STONE: If you could pull back up the timeline.

11:19:13 3 Q. And is your first provisional reflected on the timeline?

11:19:16 4 A. Yes, it is.

11:19:16 5 Q. When did you file that?

11:19:19 6 A. June 28th, 2007, the day before the iPhone came out.

11:19:23 7 Q. Now, why were you so interested in making sure that you  
11:19:26 8 had patent protection?

11:19:27 9 A. So at this time, you know, in terms of mobile devices and  
11:19:34 10 trying to figure out how to build a business rolling out  
11:19:38 11 software to mobile devices, the -- the challenges were much  
11:19:42 12 different and much more difficult than they are today.

11:19:45 13 You couldn't just put an app in the App Store. You  
11:19:50 14 had to not only convince, sort of, Motorola and Nokia,  
11:19:55 15 Blackberry, et cetera, of the -- that they should be interested  
11:19:59 16 in loading your software on their phones, but they wouldn't do  
11:20:02 17 anything unless you convinced AT&T and Verizon and T-Mobile and  
11:20:08 18 everybody else. So it wasn't like we were just trying to  
11:20:11 19 defend against one 800-pound gorilla. It was a whole jungle of  
11:20:15 20 800-pound gorillas.

11:20:17 21 And we just thought, you know, there's no  
11:20:18 22 confidentiality agreement that's going to protect us against  
11:20:24 23 all these huge players. And we thought, you know, it's -- you  
11:20:30 24 know, as a startup, as a new technology startup, you know, you  
11:20:36 25 have two choices when you invent technology: You can keep it

11:20:39 1 as a trade secret, which many companies do -- most companies  
11:20:42 2 keep things as a trade secret. Or you can file for patents.

11:20:47 3 And then, you know, there is an enormous burden  
11:20:51 4 placed on you in terms of the documentation. You know, you  
11:20:55 5 have to completely spell out the nature of the invention.

11:20:59 6 MS. ANDERSON: Objection, Your Honor. The witness is  
11:21:00 7 testifying in an expert area.

11:21:02 8 THE COURT: I can't hear you. You'll have to speak  
11:21:05 9 into the microphone.

11:21:05 10 MS. ANDERSON: The witness --

11:21:05 11 THE COURT: Wait. Speak into the microphone.

11:21:06 12 MS. ANDERSON: Oh. Thank you, Your Honor. The  
11:21:08 13 witness is testifying in regard to an expert area and is  
11:21:10 14 continuing into an area that lacks foundation.

11:21:13 15 THE COURT: Sustained. Have him testify as to  
11:21:14 16 personal knowledge.

11:21:15 17 MR. STONE: We'll move on, Your Honor.

11:21:17 18 Q. (BY MR. STONE) Now, did there come a time after you filed  
11:21:20 19 your first patent provisional that you released your first  
11:21:24 20 commercial app?

11:21:25 21 A. Yes.

11:21:25 22 Q. When was that?

11:21:26 23 A. 2001. So it was -- I think it was May 2011 for the iPhone  
11:21:33 24 app and --

11:21:33 25 Q. Is that reflected on the timeline that we have up there?

11:21:37 1 A. Yes, it is.

11:21:39 2 Q. And what about for Android?

11:21:40 3 A. That was in November -- beginning of November of 2011.

11:21:45 4 Q. And what happened after you released those apps in 2011?

11:21:50 5 A. It was incredible. We -- we grew unbelievably quickly.

11:21:55 6 You know, we pretty quickly achieved a growth rate of -- we

11:22:01 7 were adding over 100,000 new users a day on a sustained basis,

11:22:06 8 and the growth and engagement was wild.

11:22:09 9 Q. And let me show you --

11:22:10 10 MR. STONE: And this is not pre-admitted , so let's  
11:22:13 11 just show the witness, Mike.

11:22:14 12 Q. -- what's been marked as P-832. And, Mr. Katis, do you  
11:22:17 13 recognize P-832?

11:22:19 14 A. Yes, I do.

11:22:19 15 Q. And what do you recognize that to be?

11:22:22 16 A. It's a company presentation.

11:22:23 17 Q. Reflecting what, sir?

11:22:28 18 A. Reflecting sort of the success we had in the early days.

11:22:33 19 Q. And was this prepared during the ordinary course of  
11:22:35 20 business at Voxer?

11:22:36 21 A. Yes, it was.

11:22:37 22 Q. At your direction?

11:22:40 23 A. Yes, it is was.

11:22:40 24 MR. STONE: Your Honor, we'd move to have  
11:22:41 25 Exhibit P-832 admitted into evidence.

11:22:42 1 MS. ANDERSON: No objection, Your Honor.

11:22:43 2 THE COURT: Plaintiff's Exhibit P-832 is admitted.

11:22:46 3 MR. STONE: And, Mike, if we could turn to the second  
11:22:48 4 page, P-832-2.

11:22:50 5 Q. Mr. Katis, what does this reflect?

11:22:55 6 A. You can see here we are the number one social networking  
11:22:58 7 app in the Apple App Store, and we're number two overall. Some  
11:23:03 8 of these -- typically, the top apps would be usually games just  
11:23:14 9 for a short period of time. We were -- so we were -- in this  
11:23:19 10 particular slide, we were number one in social networking and  
11:23:22 11 number two overall, of all free apps.

11:23:25 12 Q. And for this period of time reflected, it was number one,  
11:23:29 13 even over Facebook?

11:23:30 14 A. That's correct.

11:23:32 15 Q. Now, is this a byproduct of the Voxer app having gone  
11:23:35 16 viral in late 2011?

11:23:36 17 MS. ANDERSON: Objection, Your Honor: leading.

11:23:38 18 THE COURT: Sustained.

11:23:39 19 Q. (BY MR. STONE) What does this reflect here, sir?

11:23:42 20 A. I mean, the -- the popularity of the app is because the  
11:23:46 21 app went viral and grew so quickly.

11:23:49 22 MR. STONE: Mike, if we could please show the witness  
11:23:51 23 Exhibit P-427. This is not pre-admitted.

11:23:57 24 Q. Mr. Katis, do you recognize Exhibit P-427?

11:23:59 25 A. Yes, I do.

11:24:00 1 Q. And what is this?

11:24:01 2 A. It's a presentation which includes a graphic from Apple.

11:24:06 3 Q. And was this a document that was prepared during the  
11:24:11 4 ordinary course of business at Voxer?

11:24:13 5 A. Yes, it was.

11:24:14 6 MR. STONE: And, Your Honor, we would like to have  
11:24:20 7 Exhibit P-427 admitted to evidence.

11:24:23 8 MS. ANDERSON: Objection, Your Honor: hearsay and  
11:24:25 9 foundation.

11:24:25 10 THE COURT: Well, ask him some follow-up questions  
11:24:28 11 and lay a better predicate for this.

11:24:30 12 MS. ANDERSON: Thank you.

11:24:31 13 Q. (BY MR. STONE) What was the purpose of preparing this  
11:24:34 14 document?

11:24:34 15 A. We were trying to show the success of the Voxer app.

11:24:41 16 Q. In what context?

11:24:42 17 A. How popular it was relative to other apps in 2012.

11:24:48 18 MR. STONE: Your Honor, we think there's sufficient  
11:24:50 19 foundation to lay this in as a business record from Voxer's  
11:24:53 20 production.

11:24:53 21 MS. ANDERSON: Objection, Your Honor: This document  
11:24:57 22 is hearsay, it is undated, there's no information about its  
11:25:03 23 preparation, and it appears to be a draft as well.

11:25:09 24 THE COURT: It has not been proved as a business  
11:25:10 25 record at this point, Mr. Stone, so the objection is sustained.

11:25:14 1 MS. ANDERSON: Thank you, Your Honor.

11:25:16 2 MR. STONE: We'll move on for now.

11:25:20 3 Q. At the end of 2012, were you familiar with what Voxer's  
11:25:23 4 position was in the App Store?

11:25:25 5 A. Yes. We were the -- according to Apple, for all of  
11:25:28 6 calendar 2012 in the U.S., we were the 13th most popular app in  
11:25:34 7 the U.S.

11:25:35 8 Q. And was that information that you provided as part of  
11:25:42 9 marketing materials to third parties during your tenure at  
11:25:46 10 Voxer?

11:25:46 11 A. Yes.

11:25:46 12 MS. ANDERSON: Objection, Your Honor: leading.

11:25:48 13 THE COURT: Sustained.

11:25:49 14 Q. (BY MR. STONE) Did you provide that to third parties?

11:25:53 15 A. Yes.

11:25:54 16 Q. How many users did Voxer have by the end of 2012?

11:25:57 17 A. In terms of total users, including anyone that had ever  
11:26:02 18 used the app, we were around 60 million. In terms of active  
11:26:06 19 users, the number was around 10 million.

11:26:09 20 Q. Was there a reason why it took so long between the  
11:26:13 21 founding of Voxer and the Voxer app going viral?

11:26:16 22 A. Yes. So, you know, multiple reasons. You know, first of  
11:26:20 23 all, it's -- it's very difficult to launch any type of an app  
11:26:24 24 that's going to go viral and be successful. If it was easy,  
11:26:26 25 anyone would do it. And we worked for years trying to figure

11:26:30 1 out, you know, how to make this compelling app.

11:26:36 2 But harder than that, we actually -- we invented this  
11:26:39 3 new networking -- this new type communication type, and it was  
11:26:43 4 really hard to figure out how to make it work. And so the  
11:26:47 5 first few years we were just trying to figure out, you know, do  
11:26:51 6 we -- if it's going to be a live messaging app, you know, we  
11:26:54 7 can't just use the standard things that are available, you  
11:26:58 8 know, APIs on the iPhone. Do we start with sort of a live  
11:27:02 9 system and figure out how to make it reliable delivery and sort  
11:27:05 10 of buffer it, or do we start with a messaging system, you know,  
11:27:09 11 that's asynchronous and nonprogressive. And do we figure out  
11:27:14 12 how to make it progressive and live? And they both sounded  
11:27:15 13 hard, and we tried both ways.

11:27:18 14 Q. What forms of communication did Voxer work with?

11:27:20 15 A. So the system is always designed to work with, you know,  
11:27:25 16 sort of all existing sort of format types. So text, voice,  
11:27:30 17 video, location, pictures. In the early days, we -- the server  
11:27:35 18 was enabled for all of those, including video. But we didn't  
11:27:41 19 enable video on the devices at that time, because in 2011 and  
11:27:45 20 2012, doing sort of livestreaming video on devices was a far,  
11:27:53 21 far bigger challenge than it is now, both from the standpoint  
11:28:00 22 of the existing networks at the time that did not have the same  
11:28:04 23 bandwidth as they do today, but also the devices themselves  
11:28:07 24 just in term of the processing and rendering capabilities of  
11:28:13 25 these devices. We were -- even with voice, we were asking them



11:28:18 1 to do a reasonable amount of work. And, with video, that would  
11:28:21 2 go up significantly.

11:28:25 3 MR. STONE: Mike, could you pull back up Plaintiff's  
11:28:27 4 Exhibit P-832.

11:28:29 5 Q. And you're familiar with the logo that Voxer used?

11:28:31 6 A. Yes.

11:28:31 7 Q. And what is it?

11:28:33 8 A. So this is our little mascot called Walkie. He's supposed  
11:28:36 9 to represent, you know, a walkie-talkie.

11:28:38 10 Q. And did Voxer operate like a walkie-talkie?

11:28:42 11 A. No, it didn't. You know, with that sort of like iconic  
11:28:53 12 thing, the same way that Instagram, their picture, their icon  
11:28:57 13 is camera, but Instagram is not a camera. You know, we -- we  
11:29:02 14 chose this as a simple, easy-to-understand icon.

11:29:05 15 And the way that people started using the app was  
11:29:08 16 thinking it worked like a walkie-talkie, like a push-to-talk  
11:29:15 17 walkie-talkie. But anybody that's used one knows that when you  
11:29:16 18 key the mic, it blares out other people's speakers, which is  
11:29:20 19 why you see police use them, you see construction workers use  
11:29:24 20 them. You don't see people using them in an office  
11:29:27 21 environment. No one is using one here.

11:29:30 22 And so with Voxer, instead of blaring out of somebody  
11:29:35 23 else's device when you spoke, it would -- you'd just get a push  
11:29:40 24 notification, and you could choose to come in and consume that  
11:29:43 25 live or you could choose to consume it later.

11:29:46 1 Q. And was there anything significant about the timeline of  
11:29:50 2 your inventions related to why the first Voxer app didn't have  
11:29:54 3 video?

11:29:54 4 A. Yes. I mean, as I said before, it's -- the quality of the  
11:29:59 5 networks at the time, the quality of the devices at the time.  
11:30:04 6 This was -- this was very early days.

11:30:07 7 Q. And when you say quality of the networks, what are you  
11:30:11 8 referring to?

11:30:13 9 A. You know, the bandwidth and the -- you know, the back end.  
11:30:18 10 Sort of the -- you know, even as 3G started coming out, in the  
11:30:23 11 same way now they talk about 5G but it's mostly 4G or 4G-plus,  
11:30:26 12 back then, even when 3G was out, in most places you were really  
11:30:29 13 getting 2, 2 1/2 G. And what you didn't want to do was have a  
11:30:33 14 really bad user experience. Because as soon as you have  
11:30:38 15 like -- as soon as somebody says, oh, this app doesn't work,  
11:30:41 16 they're going to stop using it.

11:30:45 17 And so we didn't want to roll out video too soon and  
11:30:48 18 have that bad, negative user experience. And that was the case  
11:30:51 19 for both networks and also for the devices, particularly lower  
11:30:54 20 Android devices struggled.

11:30:54 21 Q. Now, you've mentioned your provisional patent applications  
11:30:54 22 a number of times. Were you one of the named inventors on  
11:30:54 23 those provisions?

11:30:54 24 A. Yes I was.

11:30:54 25 Q. Now, let me show you what we've had marked as Plaintiff's

11:30:54 1 Exhibit P-5.

11:30:54 2 MR. STONE: Your Honor, this is pre-admitted.

11:30:54 3 Q. Mr. Katis, do you recognize this?

11:30:54 4 A. Yes, I do.

11:30:54 5 Q. And what is it?

11:30:54 6 A. This is our first provisional patent application.

11:30:54 7 Q. And what did you intend this to cover?

11:30:54 8 A. The scope of the idea, including, you know, live  
11:30:54 9 messaging, and then multiple conversation management system.

11:30:54 10 Q. And, Mr. Katis, if you could look at page P-5-4?

11:30:54 11 MR. STONE: Mike, if you could pull that up.

11:30:54 12 Q. And what's described there, sir?

11:30:54 13 A. So you can see here we're trying to describe the nature of  
11:30:54 14 the invention, and a key part here is what we're saying, you  
11:30:54 15 know, to do for voice and video communications what e-mail,  
11:30:54 16 instant messaging, and devices like Blackberry have done for  
11:30:54 17 correspondence.

11:30:54 18 So this is, you know, we're trying to say prior to  
11:30:54 19 this, you know, video is TV or, like, livestreaming something.  
11:30:54 20 But, you know, we had a vision for something that was not that.  
11:30:54 21 He had a vision for something that, you know, could be live but  
11:30:54 22 didn't have to be and could be a two-way interactive thing.

11:30:54 23 The same way that you can, you know, on Facebook Live  
11:30:54 24 you can type things back to the person who is streaming and be  
11:30:54 25 interactive with that person. It's an interactive system.

11:30:54 1 It's not just TV or just livestreaming.

11:30:54 2 Q. Was there another provisional patent application?

11:30:54 3 A. Yes, there is.

11:30:54 4 Q. Let me show you what we have marked as Plaintiff's Exhibit  
11:30:54 5 P-6.

11:30:54 6 MR. STONE: And, Your Honor, this is also  
11:30:54 7 pre-admitted.

11:30:54 8 Q. Mr. Katis, do you recognize this?

11:30:54 9 A. Yes, I do.

11:30:54 10 Q. And what is this?

11:30:54 11 A. So this is -- we filed later in the year, in October of  
11:30:54 12 2007. And we expanded the team. So it included myself and  
11:30:54 13 Matt Ranney. But the two big additions were Jim and  
11:30:54 14 Mary Panttaja.

11:30:54 15 Q. And what did you intend your second provisional to cover?

11:30:54 16 A. This was, you know, after having, you know, multiple  
11:30:54 17 months to really, like you saw the picture of us  
11:30:54 18 white-boarding, we spent months really deep diving on what  
11:30:54 19 is -- what's the core of the idea. Where does -- where do all  
11:30:54 20 existing technologies sort of end, and what should we -- what's  
11:30:54 21 the fullest nature of this thing that we've invented and how do  
11:30:54 22 we think it might be able to build it and what we should focus  
11:30:54 23 on building first?

11:30:54 24 MR. STONE: And if we could turn to page P6-13.

11:30:54 25 Q. What are you describing here, sir?

11:30:54 1 A. This is a target market description. So this is just, you  
11:30:54 2 know, we're looking at sort of what are the potential markets  
11:30:54 3 we could go to. So, you know, there's business and enterprise,  
11:30:54 4 obviously, there's the consumer market, like social networks,  
11:30:54 5 you know, media broadcasting, et cetera.

11:30:54 6 A big one at the bottom is tactical. This was sort  
11:30:54 7 of the original inspiration of the idea. But we knew that the  
11:30:54 8 idea was much bigger than tactical. And, again, this all  
11:30:54 9 started from, you know, imagining not from a technical  
11:30:54 10 standpoint, but from a human standpoint, you know, how do I  
11:30:54 11 want to interact? What's the outcome human interaction method?  
11:30:54 12 And that was where things started.

11:30:54 13 And then I needed someone like Matt Ranney to help  
11:30:54 14 figure out how do we actually build a system that can actually  
11:30:54 15 support that -- that user model.

11:30:54 16 Q. And why did you include all these use cases?

11:30:54 17 A. Because the provisional patent application we wanted to  
11:30:54 18 lay out the range of the things that we thought were possible  
11:30:54 19 to be built with this.

11:30:54 20 Q. Now, did you do all these things?

11:30:54 21 A. No. Definitely not. I mean, the first rule of startups  
11:30:54 22 is that you need to focus. You can't do everything. If you  
11:30:54 23 try to do everything, you're going to fail. And so we chose  
11:30:54 24 one thing. We decided to do this sort of walkie-talkie style  
11:30:54 25 live interaction. But it's not a walkie-talkie. It's this

11:30:54 1 live messaging thing that we're all excited about, and this  
11:30:54 2 would be the first implementation.

11:30:54 3 Q. Did you ultimately receive patents related to your live  
11:30:54 4 messaging technology?

11:30:54 5 A. Yes, we did.

11:30:54 6 Q. And are you a named inventor on more than one Voxer  
11:30:54 7 patent?

11:30:54 8 A. Yes, I am.

11:30:54 9 Q. How many?

11:30:54 10 A. More than 150.

11:30:54 11 Q. And are you familiar with the patents being asserted in  
11:30:54 12 this case?

11:30:54 13 A. Yes, I am.

11:30:54 14 Q. And which ones are they?

11:30:54 15 A. We refer to them as '270 patent and the '557 patent.

11:30:54 16 MR. STONE: Now, let's pull up Plaintiff's  
11:30:54 17 pre-admitted Exhibit Number P3.

11:30:54 18 Q. Mr. Katis, do you recognize this?

11:30:54 19 A. Yes, I do.

11:30:54 20 Q. And what is it?

11:30:54 21 A. This is a '270 patent.

11:30:54 22 Q. And are you a named inventor?

11:30:54 23 A. Yes, I am. Along with Jim and Mary Panttaja and  
11:30:54 24 Matt Ranney.

11:30:54 25 Q. And did you draft the claims in this patent?

11:30:54 1 A. No, I did not. A hired counsel to do it.

11:30:54 2 Q. And what is the other patent being asserted?

11:30:54 3 A. The '557.

11:30:54 4 MR. STONE: And if we could pull up, please,  
11:30:54 5 Plaintiff's Pre-admitted Exhibit P4.

11:30:54 6 Q. Mr. Katis, do to you recognize this?

11:30:54 7 A. Yes, I do.

11:30:54 8 Q. And what is this?

11:30:54 9 A. This is the '557 patent.

11:30:54 10 Q. And are you a named inventor on the patent?

11:30:54 11 A. Yes, I am. Along with Jim and Mary Panttaja and  
11:30:54 12 Matt Ranney.

11:30:54 13 Q. Now, Mr. Katis, did there ever come a time when you  
11:30:54 14 discussed your technology and your patents with Facebook?

11:30:54 15 A. Yes. Many times.

11:30:54 16 Q. And when?

11:30:54 17 A. So the first time -- if we refer to the timeline, the  
11:30:54 18 first time we met with them was early. It was -- you can see  
11:30:54 19 here on August 17th of 2010.

11:30:54 20 Q. And who participated in that meeting?

11:30:54 21 A. From Voxer's side it was myself, Matt Ranney, Andy Kelly,  
11:30:54 22 who is my business affairs, and Gustaf Alstromer, who was my  
11:30:54 23 head of growth.

11:30:54 24 Q. And what was Mr. Alstromer role as head of growth?

11:30:54 25 A. So being head of growth, you basically -- it's a product

11:30:54 1 type function where you're looking at the way the product is  
11:30:54 2 designed and trying to understand which aspects of it are  
11:30:54 3 contributing to growth and engagement and which can be made to  
11:30:54 4 contribute more or modified or improved.

11:30:54 5 Q. And what do you recall about that meeting?

11:30:54 6 A. So we met with Chamath Palihapitiya, who was there for  
11:30:54 7 Facebooks head of growth, and Matt Papakipos, who was one of  
11:30:54 8 the directors of engineering.

11:30:54 9 Q. And what did you discuss at that meeting?

11:30:54 10 A. So this was early on and not fully launched, a production  
11:30:54 11 version of Voxer. We had a beta. You know, it was sort of a  
11:30:54 12 working prototype. And this was based on sort of a chance  
11:30:54 13 meeting of Andy Kelly. And they set it up, and it was just  
11:30:54 14 sort of an introductory meeting.

11:30:54 15 And so we spoke at a fairly high level. We showed  
11:30:54 16 them -- we showed them the app working, and they were  
11:30:54 17 intrigued. And we talked at a high level about, well, you know  
11:30:54 18 at any one of these meetings before, I would talk about our  
11:30:54 19 live messaging technology, which was always exciting. But  
11:30:54 20 it's -- because most companies don't go the patent route, most  
11:30:54 21 companies just use trade secrets --

11:30:54 22 MS. ANDERSON: Objection, Your Honor: The witness is  
11:30:54 23 testifying as to matters which lack foundation.

11:30:54 24 MR. STONE: He's testifying --

11:30:54 25 MS. ANDERSON: Other's knowledge and what most other



11:30:54 1 companies do. Move to strike that portion, Your Honor.

11:30:54 2 THE COURT: Well, he had knowledge of that. He's in  
11:30:54 3 the industry. And I don't think that's of major importance  
11:30:54 4 anyway. The objection is overruled.

11:30:54 5 MR. STONE: Thank you, Your Honor.

11:30:54 6 MS. ANDERSON: Thank you, Your Honor.

11:30:54 7 A. Yeah. So because we made this decision early on to go the  
11:30:54 8 route of filing for patents, we knew that, you know, we would  
11:30:54 9 have some protection there, and we knew that if we didn't tell  
11:30:54 10 them that we had patents, then they would assume we didn't.  
11:30:54 11 And we just wanted to be clear and up-front, you know, that  
11:30:54 12 this is something that's been a core of the business from the  
11:30:54 13 beginning.

11:30:54 14 So I'd always at every meeting disclose the patents  
11:30:54 15 briefly and then move on and describe the nature of this new  
11:30:54 16 networking type that we figured out, this new communication  
11:30:54 17 type.

11:30:54 18 Q. Did Voxer provide a demo?

11:30:54 19 A. We did.

11:30:54 20 Q. Now, let me show you what I've marked as Plaintiff's  
11:30:54 21 Exhibit -- which we've marked as Plaintiff's Exhibit P-752.

11:30:54 22 MR. STONE: Your Honor, this is pre-admitted.

11:30:54 23 THE COURT: That's fine. It's not really  
11:30:56 24 pre-admitted. It's admitted.

11:30:58 25 MR. STONE: Your Honor, correct.

11:30:59 1 THE COURT: Because I admitted it.

11:31:01 2 MR. STONE: I apologize.

11:31:02 3 THE COURT: For the jury, there's no difference  
11:31:03 4 between pre-admitted exhibits, the list I read to you at the  
11:31:08 5 beginning and any other exhibits.

11:31:10 6 MR. STONE: Thank you, Your Honor.

11:31:11 7 Q. Mr. Katis, do you recognize Exhibit P-752?

11:39:58 8 A. Yes, I do.

11:39:58 9 Q. And what is it?

11:39:59 10 A. This is an e-mail from myself to the company. Well, the  
11:40:03 11 company that became Voxer. At this point we had that  
11:40:05 12 intermediate name RebelVox.

11:40:06 13 Q. And can you please read what you wrote after Point 1.

11:40:08 14 A. Sure. It said: "They love what we are doing. Regardless  
11:40:15 15 of whether anything moves forward, we are on their radar.  
11:40:17 16 Their VP of Growth and Mobile kept saying 'that's so cool'  
11:40:19 17 throughout the whole demo. We were very clear that we were  
11:40:23 18 still in beta. They commented on the clunky bits, but they  
11:40:27 19 were able to look past them. The app itself worked  
11:40:30 20 beautifully."

11:40:31 21 Q. Was this your takeaway from the meeting?

11:40:37 22 A. Yes, it was.

11:40:37 23 Q. When did you next meet with Facebook?

11:40:39 24 A. If we can look at the timeline?

11:40:41 25 So the next meeting with Facebook was after the

11:40:43 1 launch of our apps and after the viral success. It would have  
11:40:47 2 been on December 12th.

11:40:48 3 Q. And who -- what were the circumstances that led to that  
11:40:51 4 meeting?

11:40:51 5 A. Facebook reached out to us to ask for a meeting.

11:40:54 6 Q. And let me show you what we'll have marked -- what has  
11:41:01 7 been admitted as Plaintiff's Exhibit 743.

11:41:04 8 Mr. Katis, do you recognize this?

11:41:06 9 A. Yes, I do.

11:41:07 10 Q. And what is this?

11:41:08 11 A. This is an e-mail from myself to Matt Ranney, my  
11:41:11 12 cofounder.

11:41:14 13 Q. And what are you describing here?

11:41:15 14 A. Just basically letting him know that I'm getting a lot of  
11:41:20 15 inbound interest, both from big tech companies like Facebook  
11:41:26 16 and Google, but also from the top VCs, venture capital firms.

11:41:30 17 Q. And what does top VCs refer to?

11:41:33 18 A. So in Silicon Valley the primary means of funding  
11:41:37 19 businesses is venture capitalists. They will make an equity  
11:41:41 20 investment in your firm. And at the time we were looking to  
11:41:45 21 raise some money.

11:41:46 22 Q. How much money were you looking to raise?

11:41:49 23 A. Around 20 million.

11:41:50 24 Q. And was that 20 million based on some valuation for Voxer?

11:41:54 25 A. Yeah. It would have resulted in a valuation of around

11:41:56 1 \$200 million.

11:41:57 2 Q. And did you ultimately receive that funding?

11:42:01 3 A. Yes, we did.

11:42:01 4 Q. And when was that?

11:42:02 5 A. We completed the round, all the paperwork and everything,  
11:42:06 6 and were funded in April of 2012.

11:42:09 7 Q. Now, did the meeting with Facebook in December of 2011 go  
11:42:13 8 forward?

11:42:15 9 A. Yes, it did.

11:42:16 10 Q. Now let me show you what has been admitted as Plaintiff's  
11:42:19 11 Exhibit 744.

11:42:20 12 Mr. Katis, do you recognize this?

11:42:21 13 A. Yes, I do.

11:42:24 14 Q. And what was this?

11:42:25 15 A. This is another e-mail from myself to the whole company at  
11:42:29 16 Voxer.

11:42:29 17 Q. And what were you describing here?

11:42:31 18 A. I was just trying to keep everybody in the loop. I  
11:42:35 19 describe, you know, that I had gone down and had a meeting at  
11:42:38 20 Facebook that day and met with a relatively junior person in  
11:42:45 21 the corp dev team.

11:42:46 22 Q. And you say with corp dev. What was the corp dev team?

11:42:48 23 A. So corporate development is typically the function within  
11:42:52 24 tech companies that looks at either raising money or acquiring  
11:42:56 25 other companies.

11:42:56 1 Q. And do you know who was leading the corp dev team at  
11:42:59 2 Facebook in 2011?

11:43:02 3 A. Yes. Amin Zoufonoun.

11:43:03 4 Q. Did you ultimately meet with Mr. Zoufonoun?

11:43:06 5 A. I did.

11:43:07 6 Q. Going back to the December meeting, what did you discuss  
11:43:12 7 at that meeting?

11:43:13 8 A. It was an early sort get-to-know-you thing. It was a  
11:43:16 9 relatively junior person. And, you know, everyone typically  
11:43:19 10 would, you know, ask about, you know, our viral growth. They  
11:43:23 11 would frequently ask about, you know, they'd heard we were  
11:43:26 12 raising money. And, you know, at some point I'd come around  
11:43:29 13 and talk about what was core to the business, and I would  
11:43:33 14 discuss or patents and our technology.

11:43:35 15 Q. Did Facebook follow up with you after this meeting?

11:43:39 16 A. Yes, they did.

11:43:40 17 Q. And what did they do?

11:43:42 18 A. If we can look at the timeline?

11:43:47 19 So on February 2nd of 2012, Peter Deng reached out to  
11:43:51 20 me and requested a meeting.

11:43:53 21 Q. Let me show you what's been admitted as Plaintiff's  
11:43:56 22 Exhibit 741.

11:43:58 23 Mr. Katis, what is Plaintiff's Exhibit 741?

11:44:00 24 MS. ANDERSON: Objection, Your Honor. I don't  
11:44:01 25 believe 741 is on our list.

11:44:08 1 MR. STONE: I apologize.

11:44:09 2 MS. ANDERSON: Thank you.

11:44:09 3 Q. (BY MR. STONE) Mr. Katis, do you recognize what has been  
11:44:12 4 marked as Plaintiff's Exhibit 741?

11:44:14 5 A. Yes, I do.

11:44:14 6 Q. And what is this?

11:44:16 7 A. This was simply sort of an introductory e-mail from  
11:44:20 8 Peter Deng to me asking for a meeting.

11:44:27 9 MR. STONE: And, Your Honor, this e-mail chain  
11:44:29 10 contains admissions from Facebook as well as a business record  
11:44:38 11 and present-sense impressions from Voxer, and we believe it  
11:44:42 12 should be admitted into evidence.

11:44:43 13 MS. ANDERSON: Your Honor, with respect to  
11:44:49 14 Exhibit 741, as we have informed Voxer, we do not object to the  
11:44:54 15 initial e-mail, which is the first one in the string. But the  
11:44:58 16 top e-mail in this exhibit is hearsay.

11:45:01 17 THE COURT: Who is Gustaf Alstromer?

11:45:05 18 THE WITNESS: He was our head of growth.

11:45:06 19 MR. STONE: He's an employee at Voxer, working at  
11:45:09 20 Mr. Katis's direction.

11:45:10 21 THE COURT: All right. I do not find what their  
11:45:12 22 internal talking to be relevant to setting up the meetings and  
11:45:16 23 what have you with Facebook, so I will admit the exhibit except  
11:45:20 24 for the e-mail from Gustaf Alstromer to Mr. Katis, which I do  
11:45:31 25 not admit.

11:45:32 1 So if you want to talk to him about this and then  
11:45:40 2 prepare a redacted version to show the jury at some point,  
11:45:49 3 we're going to be breaking for lunch in 15 minutes, so you can  
11:45:59 4 do something with that.

11:46:00 5 It's admitted except for the February 3rd, 2012  
11:46:06 6 e-mail.

11:46:07 7 MR. STONE: And, Your Honor, we really want to focus  
11:46:09 8 on the Facebook admissions here anyway, so I can just show that  
11:46:11 9 portion on the screen.

11:46:12 10 THE COURT: As long as you just show that portion on  
11:46:15 11 the screen, that's fine.

11:46:16 12 MR. STONE: Great. That's what we'll do, Your Honor.

11:46:18 13 MS. ANDERSON: Thank you, Your Honor.

11:46:18 14 Q. (BY MR. STONE) So, Mr. Katis, what was this e-mail?

11:46:21 15 A. This is an e-mail from Peter Deng at Facebook to myself,  
11:46:28 16 and he was -- he wanted to arrange a meeting.

11:46:30 17 Q. And who was Peter Deng?

11:46:32 18 A. Peter Deng was one of the people leading the Facebook  
11:46:35 19 Messenger group.

11:46:36 20 Q. Do you know what his title was?

11:46:39 21 A. I believe his title was director of product.

11:46:55 22 Q. And what was Facebook Messenger?

11:46:57 23 A. Facebook Messenger was a messaging app, not unlike Voxer.  
11:47:01 24 We were both messaging apps. But Facebook Messenger didn't  
11:47:07 25 have any type of voice component to it. It was texts,

11:47:10 1 pictures, you can attach videos. And it was relatively early  
11:47:15 2 in its development.

11:47:17 3 Q. And did you understand what Mr. Deng's role was in  
11:47:21 4 connection with your interactions with Facebook?

11:47:23 5 A. Peter Deng ended up sort of being a point person for a lot  
11:47:29 6 of our interactions. He was sort of from this point going  
11:47:33 7 forward basically our point for arranging all the meetings.

11:47:39 8 Q. Now, there's also a reference to Ben in the e-mail and in  
11:47:42 9 the CC line. Do you see that?

11:47:46 10 A. Yes.

11:47:46 11 Q. And who is Mr. Davenport?

11:47:47 12 A. Ben Davenport had started a company called Beluga, which  
11:47:50 13 was a small messaging app, and Facebook had acquired them and  
11:47:54 14 made them the core of their Messenger team.

11:47:56 15 Q. Did you subsequently meet with Mr. Deng and Mr. Davenport?

11:47:59 16 A. Yes, I did.

11:48:00 17 Q. And when did you do that?

11:48:02 18 A. If we can look at the timeline?

11:48:05 19 So you can see here on February 8th I met with  
11:48:12 20 Peter Deng and Ben Davenport, as well as Mike Schroepfer?

11:48:15 21 Q. And where did that meeting take place?

11:48:17 22 A. At Facebook's headquarters.

11:48:19 23 Q. And what did you discuss at that meeting?

11:48:22 24 A. So it was -- it was clear that they had spent a lot of  
11:48:30 25 time on Voxer. They were super intrigued by it. It was also



11:48:36 1 clear that, initially, they had viewed really as sort of a  
11:48:41 2 walkie-talkie voice -- like, live voice. And they -- they got  
11:48:44 3 that it wasn't quite a walkie-talkie, that we were doing  
11:48:48 4 something different, but they didn't fully understand it.

11:48:50 5 And so, you know, as I always did, you know, I would  
11:48:54 6 mention, you know -- you know, this new technology in the  
11:48:59 7 context that we had from the beginning sought to patent it.  
11:49:04 8 And we felt that there was this -- we had just sort of cracked  
11:49:09 9 open the whole new area of communications technologies.

11:49:13 10 MS. ANDERSON: Objection, Your Honor: The witness is  
11:49:14 11 testifying as to hearsay, as to what Voxer has said to  
11:49:17 12 Facebook.

11:49:18 13 THE COURT: Sustained.

11:49:19 14 MS. ANDERSON: Thank you, Your Honor.

11:49:20 15 Q. (BY MR. STONE) Mr. Katis, did you meet with anyone else in  
11:49:22 16 connection with these meetings?

11:49:24 17 A. Yes. I met briefly with Mike Schroepfer.

11:49:27 18 Q. And who was that?

11:49:28 19 A. Mike Schroepfer was the director of engineering. He  
11:49:32 20 was -- my understanding is that he was basically the number two  
11:49:37 21 engineer at Facebook.

11:49:38 22 Q. Did Facebook ask you anything else during these meetings?

11:49:41 23 A. They asked us a lot of questions, including that they were  
11:49:46 24 curious about our current capital raise. They knew that we  
11:49:50 25 were out talking to venture capitalists, and they were

11:49:52 1 interested in that.

11:49:53 2 Q. And what did you understand the next steps to be with  
11:49:56 3 Facebook?

11:49:56 4 A. They said that they would get together and discuss it and  
11:49:59 5 get back to me.

11:50:01 6 Q. And did they?

11:50:02 7 A. Yes, they did.

11:50:03 8 Q. And did they ask for another meeting?

11:50:05 9 A. Yes, they did.

11:50:07 10 Q. And where did that meeting take place?

11:50:09 11 A. At Voxer -- excuse me. At Facebook headquarters on  
11:50:12 12 February 16th.

11:50:13 13 Q. And when did that meeting take place?

11:50:15 14 A. February 16th.

11:50:16 15 MR. STONE: Your Honor, let me show the witness  
11:50:18 16 what's been marked as Exhibit P-739. It's not been  
11:50:21 17 pre-admitted.

11:50:22 18 Q. Mr. Katis, do you recognize this?

11:50:24 19 A. Yes, I do.

11:50:25 20 Q. And what is it?

11:50:27 21 A. This is an e-mail from Gustaf to myself. We were the two  
11:50:31 22 who went to Facebook's headquarters for the meeting.

11:50:36 23 Q. And when was it prepared?

11:50:39 24 A. This was -- like immediately after the meeting. He sent  
11:50:46 25 it to myself and the senior management team. I had asked him

11:50:50 1 to prepare a summary for us of the meeting.

11:50:56 2 Q. And is this is summary that Mr. Alstromer prepared at your  
11:50:59 3 direction following the meeting?

11:51:01 4 A. Yes.

11:51:01 5 MR. STONE: And, Your Honor, we'd like to have  
11:51:05 6 Exhibit P-739 admitted into evidence.

11:51:10 7 MS. ANDERSON: Objection, Your Honor: The e-mail is  
11:51:11 8 hearsay and contains hearsay within hearsay as well. It also  
11:51:14 9 has some statements in it which contain speculation and lack of  
11:51:19 10 foundation.

11:51:19 11 THE COURT: I agree. I'm going to sustain the  
11:51:22 12 objection, but I will allow you to question this witness about  
11:51:30 13 his personal knowledge of what went on in the meeting and what  
11:51:35 14 actions he took.

11:51:36 15 Q. (BY MR. STONE) And, Mr. Katis, can you tell me what you  
11:51:38 16 recall about that meeting?

11:51:40 17 A. Yes, absolutely. So I met with Peter Deng. He took me in  
11:51:48 18 to meet with Amin Zoufonoun. So Amin Zoufonoun was Facebook's  
11:51:51 19 head of corporate development. So that sort of set the tone  
11:51:57 20 for the day. The only reason -- you know, I had already  
11:52:00 21 described the function to corporate development, and so we knew  
11:52:03 22 that Facebook was considering, you know, a strategic move with  
11:52:07 23 us.

11:52:08 24 I had a nice introductory meeting with Amin. He  
11:52:13 25 typically asked questions that had more to do with the fact

11:52:15 1 that we were out trying to raise money and more corporate  
11:52:19 2 things. And then Peter Deng and Amin Zoufonoun took me to go  
11:52:23 3 mote with Mike Schroepfer. But on the way we were passing  
11:52:27 4 Mark Zuckerberg's desk and he was there, so they introduced us.  
11:52:33 5 Q. And what did you discuss with Mr. Zuckerberg?  
11:52:36 6 A. We only had about five minutes with Mark Zuckerberg. And,  
11:52:40 7 you know, we were, you know, thrilled to meet him. And, you  
11:52:45 8 know, he -- he knew all about us. He told us he had been using  
11:52:51 9 it with his girlfriend, using Voxer with his girlfriend. And  
11:52:54 10 he asked me a question about engagement. And Gustaf had just  
11:52:59 11 given me an interesting stat that morning and I remembered, so  
11:53:04 12 I -- I told him that and he seemed to be impressed.

11:53:10 13 I knew that we only had a short time, and so I sort  
11:53:13 14 of made my pitches to what live messaging is. You know, the --  
11:53:18 15 everybody knew that we were this viral success, you know,  
11:53:23 16 walkie-talkie app, et cetera. What I really wanted to make  
11:53:26 17 sure to get across to someone like Mark Zuckerberg was that we  
11:53:29 18 felt that we had invented a new communication --

11:53:34 19 MS. ANDERSON: Objection: hearsay statements by Voxer  
11:53:37 20 to Facebook during these discussions.

11:53:39 21 MR. STONE: He's saying what he said, Your Honor.

11:53:42 22 THE COURT: It's just what he said.

11:53:43 23 MR. STONE: Yes.

11:53:44 24 THE COURT: So it's overruled.

11:53:46 25 MS. ANDERSON: Thank you, Your Honor.

11:53:47 1 MR. STONE: Thank you, Your Honor.

11:53:47 2 A. So I told him briefly -- of course, I prefaced it with,  
11:53:53 3 you know, that we have patents, intellectual property  
11:53:57 4 protection, and the core of the company since its founding, and  
11:54:00 5 that we feel very proud of this live messaging technology that  
11:54:05 6 we've invented that's not just live or just a message, it's  
11:54:07 7 this thing in between. And, you know, I told him that, you  
11:54:11 8 know, the current Voxer app, you know, employs it, but there  
11:54:14 9 are many use cases and we'd love to discuss them with him.

11:54:20 10 Q. Why did you mention your patents in this brief  
11:54:24 11 conversation?

11:54:24 12 A. I did it pretty much -- it was sort of, you know, just  
11:54:28 13 practice with every single conversation I had with anybody  
11:54:30 14 about the technology. I always start with that.

11:54:33 15 Q. And who else did you meet with during this series of  
11:54:36 16 meetings?

11:54:36 17 A. From there we went to Mike Schroepfer. He was, again,  
11:54:40 18 director of engineering. Our understanding was he was the  
11:54:45 19 number two engineer at Facebook.

11:54:47 20 Q. And what did you discuss with him?

11:54:50 21 A. He -- he had a few questions, but then he pretty quickly  
11:54:54 22 got down to, you know, would we be interested in selling to  
11:54:58 23 Facebook?

11:54:59 24 Q. And what did you say?

11:55:00 25 A. So it's -- it's, you know, a weighty moment when you have

11:55:03 1 a new business that's growing quickly and Facebook asks you  
11:55:06 2 that question. And, you know, it's certainly -- there  
11:55:10 3 certainly could have been a number, but my -- I was so bold as  
11:55:15 4 to suggest -- I didn't -- I never said we won't sell. I just  
11:55:20 5 said, How about -- What if we sold you the consumer business --  
11:55:24 6 instead of selling you the whole company, what if we sell you  
11:55:27 7 the consumer business, and you guys do consumer. You know,  
11:55:34 8 I'll license you the technology.

11:55:36 9 But Voxer, like, we really want to do tactical,  
11:55:40 10 police, military, we want to enterprises. We want to do all  
11:55:44 11 these other use cases, and Facebook has no interest in these  
11:55:47 12 other markets. So I proposed that we would sell the Voxer  
11:55:51 13 consumer network and license the technology. And that way what  
11:55:57 14 was left of Voxer, we would pursue these other markets that  
11:55:59 15 Facebook was not interested in.

11:56:00 16 Q. And what was Mr. Schroepfer's reaction to that?

11:56:03 17 A. He was intrigued by it.

11:56:05 18 Q. And what were the next steps with Facebook after this  
11:56:07 19 meeting?

11:56:07 20 A. He wanted to -- he wanted us to have a follow-up meeting  
11:56:14 21 to discuss licensing, and he asked that we bring my CTO, my  
11:56:19 22 cofounder, Matt Ranney, because in this meeting it was myself  
11:56:23 23 and Gustaf. So neither of us was an engineer.

11:56:25 24 Q. And so did Facebook follow up after this meeting?

11:56:29 25 A. Yes, they did.

11:56:31 1 Q. Now, let me show you what's been marked as Exhibit P-737.

11:56:34 2 And this is admitted.

11:56:37 3 Mr. Katis, do you recognize this?

11:56:38 4 A. One moment. Yes, I do.

11:56:40 5 Q. And what is this?

11:56:41 6 A. So this is Chris Daniels reaching out. So Amin Zoufonoun,  
11:56:47 7 who was head of corporate development for Facebook, introduced  
11:56:50 8 Chris Daniels, who is Facebook's head of business development  
11:56:54 9 to me, to set up a meeting.

11:56:56 10 Q. And did he set up such a meeting?

11:57:03 11 A. Yes, he did.

11:57:04 12 MR. STONE: And, Your Honor, this might be a good  
11:57:05 13 time for us to break before we get into that.

11:57:12 14 THE COURT: Ladies and gentlemen, I agree. This is a  
11:57:15 15 good time to take our noon recess. We'll be in recess today  
11:57:19 16 until 1:30.

11:57:20 17 Remember the instructions the court has previously  
11:57:23 18 given you: Do not talk about this case among yourselves or  
11:57:26 19 with anyone else. Do not read any newspaper or magazines or  
11:57:31 20 any periodicals that may have information about this case. Do  
11:57:33 21 not listen to any radio or observe any television broadcasts  
11:57:37 22 that may have information about this case. Do not attempt to  
11:57:39 23 find out anything about this case or any of the issues in it  
11:57:44 24 through the use of any electronic device, and do not transmit  
11:57:50 25 any information about this case to anyone by my electronic

11:57:53 1 device.

11:57:54 2 Please be back in your jury room a little before

11:57:56 3 1:30.

11:57:58 4 (Jury recessed)

11:57:58 5 THE COURT: We'll be in recess until 1:30.

18:00:00 6 (Recess)

11:58:10 7 (Open court, no jury)

11:58:10 8 THE COURT: Good afternoon, ladies and gentlemen. We

11:58:12 9 ready to proceed?

11:58:13 10 MR. STONE: Yes, Your Honor.

11:58:15 11 MS. ANDERSON: Yes, Your Honor.

11:58:48 12 THE COURT: All right. You may bring in the jury.

11:58:53 13 (Open court, jury present)

11:58:54 14 THE COURT: Mr. Stone, you may continue your direct

11:59:06 15 examination of Mr. Katis.

12:59:50 16 MR. STONE: Thank you, Your Honor.

12:59:51 17 Q. And to reorient ourselves after our lunch break, if you

13:08:47 18 could look at the timeline, Mr. Katis?

13:30:39 19 A. Yes.

13:30:39 20 Q. And I think before lunch you were about to discuss or were

13:30:43 21 discussing some interactions that you had with

13:31:15 22 Mr. Chris Daniels; is that right?

13:31:16 23 A. That's correct.

13:31:17 24 Q. And who was Chris Daniels?

13:31:20 25 A. So Chris Daniels was introduced to me as the head of



13:31:26 1 business development. So as opposed to Amin Zoufonoun, who was  
13:31:29 2 head of corporate development, corporate development typically  
13:31:32 3 is, like, raising money and acquiring companies, business  
13:31:34 4 development is typically more like business deals, licensing,  
13:31:38 5 and things like that.

13:31:40 6 And so in the conversation with Mike Schroepfer, the  
13:31:43 7 director of engineering, he was intrigued by this concept of --  
13:31:49 8 of selling just the consumer part, not the whole company, and  
13:31:52 9 potentially licensing the technology. And so because there  
13:31:55 10 would be a significant licensing component, he wanted to get  
13:31:58 11 Chris Daniels involved.

13:32:00 12 Q. And so did you have an understanding you would be  
13:32:05 13 discussing licensing with Mr. Daniels?

13:32:07 14 A. Yes. That was explicit, and he also asked to bring  
13:32:12 15 Matt Ranney, my CTO.

13:32:13 16 Q. And Matt Ranney was going to discuss what aspects?

13:32:16 17 A. Well, we were going to a deeper dive on the technology.

13:32:19 18 Q. And were you excited about this meeting?

13:32:22 19 A. I was very excited.

13:32:23 20 Q. And why was that?

13:32:24 21 A. I mean, you know, Facebook is an incredible company that  
13:32:28 22 has, you know -- you know, a lot of amazing people who work  
13:32:32 23 there and incredible scale. And the prospect of this  
13:32:34 24 technology that we developed being put to use, you know, by  
13:32:38 25 them was exciting. And then it would also free us to focus on

13:32:41 1 enterprise and -- and tactical and other systems.

13:32:46 2 Q. And did you meet with Mr. Daniels?

13:32:47 3 A. Yes, I did.

13:32:48 4 Q. And when did you do that?

13:32:51 5 A. So if you look at the timeline, you'll see that we met on  
13:32:55 6 March 6th of 2012.

13:32:56 7 Q. And what was discussed at that meeting?

13:32:59 8 A. So that meeting, all the meetings sort of increased in  
13:33:04 9 enthusiasm and the numbers of people every meeting. We met  
13:33:07 10 with more and more people. This meeting was no exception. So  
13:33:10 11 in addition to Peter Deng, who seemed to sort of come to all  
13:33:13 12 the meetings, Chris Daniels sort of took the lead in organizing  
13:33:17 13 this one.

13:33:18 14 But there were a lot of -- we were kind of surprised  
13:33:24 15 how many engineers and product people that were in -- it was a  
13:33:26 16 large conference room and a lot of people in attendance.

13:33:29 17 Q. And when you say product people, what are you referring  
13:33:33 18 to?

13:33:33 19 A. So I think engineers is somewhat self-explanatory in terms  
13:33:38 20 of they're the people that write the code and do the hard-core  
13:33:40 21 engineering in the system. Product people are people more who  
13:33:43 22 design the user interaction, user interfaces, how does the  
13:33:46 23 product work, how do you -- how do you -- how does it act from  
13:33:49 24 a human standpoint, how does sort of the human interaction  
13:33:54 25 interact with the technology.

13:33:55 1 Q. And do you recall specific questions that were asked of  
13:33:58 2 you at the meeting?

13:34:00 3 A. Yes. You know, it started off, you know, sort of the way  
13:34:04 4 that pretty much, you know, every meeting has ever started off  
13:34:07 5 with us, which is, you know, I was very proud of, you know, our  
13:34:11 6 patents and would always lead with that. And that -- and that,  
13:34:14 7 you know, just for the new people that I hadn't met with yet,  
13:34:18 8 bringing them up to speed that Voxer, the app we created, the  
13:34:21 9 walkie-talkie app, was just the first product for us. And what  
13:34:24 10 we were -- we were really excited about was this live messaging  
13:34:27 11 technology and concept that was in between synchronous and  
13:34:31 12 asynchronous communications. It was sort of that hybrid  
13:34:34 13 system.

13:34:35 14 And the engineers spent quite a bit of time asking  
13:34:37 15 Matt Ranney questions, and he did a lot of white-boarding.  
13:34:40 16 This is the type of thing that, you know, having patents gives  
13:34:44 17 you much more confidence in a situation like this because, you  
13:34:51 18 know -- you know, confidentiality agreements aren't always the  
13:34:58 19 best enforcement tools in Silicon Valley. And so going in with  
13:35:01 20 patents, we had much higher degree of confidence. And -- and,  
13:35:06 21 of course, you know, we wanted to -- we wanted to do a deal.  
13:35:09 22 We wanted to, you know, acquire Facebook as a customer and  
13:35:14 23 partner.

13:35:14 24 Q. Did you discuss any use cases for live messaging at the  
13:35:19 25 meeting?

13:35:20 1 A. Very much. And, in fact, the bulk of the questions that  
13:35:23 2 were asked by the product people were about video.

13:35:27 3 Q. And what did you say about that?

13:35:28 4 A. Well, I had done an enormous amount of thinking for years  
13:35:32 5 about all these different use cases, and so I spent quite a bit  
13:35:35 6 of time talking them through potential use cases for live  
13:35:38 7 messaging video in a social media context.

13:35:41 8 Q. Do you recall how the meeting ended?

13:35:43 9 A. Yes. There was a lot of enthusiasm, and I felt great  
13:35:48 10 about it. And it took a little while for people to file out  
13:35:51 11 over the conference room. And I pulled Chris Daniels aside,  
13:35:54 12 and I just asked him, How do you think it went? You know, how  
13:35:59 13 is it going?

13:36:00 14 And he said he thought it went great, and then he  
13:36:04 15 said we're just -- we're just trying to decide if you guys are  
13:36:11 16 a competitor and if this is a core technology.

13:36:13 17 Q. And what was your reaction to that?

13:36:15 18 A. I got very nervous.

13:36:17 19 Q. Why were you nervous?

13:36:18 20 A. I mean, we sort of know what a competitor is, and I was --  
13:36:23 21 you know, clearly, we -- you know, Facebook had a messenger app  
13:36:26 22 and Voxer was a messaging app. The conversation we were having  
13:36:28 23 was about can we sell the consumer network and do licensing and  
13:36:32 24 stop being competitors and you guys can do consumer and we'll  
13:36:36 25 do enterprise, tactical et cetera. So I thought we'd sort of

13:36:38 1 tackled that component of it.

13:36:40 2 But when he mentioned that they were discussing  
13:36:41 3 whether this was a core technology, it scared me because, you  
13:36:47 4 know, sort of in the -- in Silicon Valley that term is a very  
13:36:52 5 specific term, which, basically, a tech company, you can  
13:36:54 6 license and use stuff from other tech companies, but not -- not  
13:37:00 7 if you consider it a core technology. If something is core to  
13:37:03 8 your business, you can't license it from anybody else because,  
13:37:06 9 if you do, then that company gets acquired by a competitor or  
13:37:12 10 something like that happens, then you can get screwed.

13:37:16 11 MS. ANDERSON: Objection, Your Honor: move to strike  
13:37:18 12 the last portion as expert opinion testimony and lacks  
13:37:20 13 foundation.

13:37:21 14 THE COURT: Sustained.

13:37:22 15 MR. STONE: Your Honor. I would say he's testifying  
13:37:24 16 about his understanding.

13:37:25 17 THE COURT: The jury -- the jury will accept the last  
13:37:27 18 statement by the witness as only his understanding of how  
13:37:29 19 things work, not as proof of how things work in Silicon Valley.

13:37:33 20 MS. ANDERSON: Thank you, Your Honor.

13:37:35 21 Q. (BY MR. STONE) Now, Mr. Katis, how did you leave it at the  
13:37:37 22 end of the meeting?

13:37:38 23 A. He said that he would huddle up with the team and get back  
13:37:42 24 to me.

13:37:43 25 Q. Now, did anyone at Facebook ever tell you that they were

13:37:47 1 looking into building a version of Voxer for themselves?

13:37:53 2 A. No. They did not.

13:37:53 3 MS. ANDERSON: Objection, Your Honor: leading.

13:37:53 4 Q. (BY MR. STONE) Mr. Katis, when was your next communication  
13:37:56 5 with Facebook?

13:37:56 6 A. As you can see from the timeline, on March 22nd of 2012,  
13:38:02 7 Chris Daniels e-mailed me to tell me that they weren't  
13:38:04 8 interested.

13:38:05 9 MR. STONE: And, Your Honor, this is an exhibit  
13:38:06 10 that's not yet admitted. I just want to show it to the  
13:38:09 11 witness. It's been marked P-736.

13:38:13 12 Q. And if we could break it down, Mr. Katis, if you could  
13:38:17 13 look at the e-mail at the bottom of P-736. Do you recognize  
13:38:22 14 that?

13:38:23 15 A. Yes, I do.

13:38:23 16 Q. And what is that?

13:38:26 17 A. That's an e-mail from Chris Daniels at Facebook to myself.

13:38:30 18 Q. Dated? What's the date?

13:38:31 19 A. March 22nd, 2012.

13:38:37 20 Q. And what did you do with that e-mail?

13:38:39 21 A. I mean, I -- I read it, I shared it with the team, and I  
13:38:44 22 responded to him.

13:38:45 23 MR. STONE: Okay. And, Your Honor, we'd like to have  
13:38:47 24 Exhibit P-736 admitted into evidence. It contains Facebook  
13:38:53 25 admissions. And the top e-mail we're not going to introduce

13:38:56 1 for the proof -- the truth of the matter asserted.

13:39:02 2 MS. ANDERSON: Objection, Your Honor: Exhibit P-736  
13:39:04 3 we don't have any objection to the original e-mail in the  
13:39:07 4 string. But the top two e-mails are hearsay, and we're aware  
13:39:10 5 of no applicable exception.

13:39:12 6 MR. STONE: It's reflected in the impression of the  
13:39:15 7 people at the company when they received this message from  
13:39:17 8 Mr. Daniels. We're not offering it for the truth of the  
13:39:21 9 matter.

13:39:22 10 THE COURT: Well, I'm looking at the exhibit, and the  
13:39:25 11 first e-mail I see at the top is from Mr. Alstromer to  
13:39:28 12 Mr. Katis.

13:39:29 13 MR. STONE: Yes.

13:39:29 14 THE COURT: Okay. And then the second one, I'm going  
13:39:32 15 to sustain the objection as to all of the e-mails that occur  
13:39:37 16 above the March 22nd, 2012 e-mail from Mr. Daniels to  
13:39:40 17 Mr. Katis.

13:39:41 18 MR. STONE: Thank you, Your Honor.

13:39:42 19 MS. ANDERSON: Thank you, Your Honor.

13:39:43 20 THE COURT: And, you know, you-all are very nice, but  
13:39:47 21 you don't have to thank me for my rulings. The taxpayers of  
13:39:59 22 this country pay me to sit up here and make them.

13:40:08 23 MR. STONE: We appreciate that.

13:40:12 24 Q. So now, Mr. Katis, if you'd look at the e-mail that  
13:40:15 25 Mr. Daniels sent you.

13:40:17 1 A. Yes.

13:40:18 2 Q. And so what did Mr. Daniels tell you?

13:40:20 3 A. He basically said that they weren't interested at this  
13:40:24 4 time. He said that, basically, they were working through their  
13:40:25 5 product priorities and the team decided it isn't in the right  
13:40:30 6 time integrating Voxer into the Messaging app.

13:40:33 7 Q. And what was your reaction to this?

13:40:36 8 A. You know, I knew that there were a couple of different  
13:40:42 9 things going on. One thing going on was that they were just  
13:40:45 10 trying to figure out how to incorporate voice, like voice  
13:40:49 11 messaging, into the Messenger app. But I also know that we had  
13:40:51 12 generated a lot of enthusiasm around this live messaging  
13:40:56 13 technology. And when he said they were trying to decide if  
13:40:58 14 this is core, you know, that scared me. And it's hard to go  
13:41:01 15 from, like, trying to decide what's core to it's not a priority  
13:41:05 16 at all. So I just -- I was concerned. I thought -- I thought  
13:41:09 17 they were moving forward, and I was sad they weren't going to  
13:41:15 18 be a part of it.

13:41:15 19 Q. And did you have an understanding as to the reaction of  
13:41:22 20 your colleagues about this?

13:41:23 21 MS. ANDERSON: Objection: lacks foundation; calls for  
13:41:26 22 speculation.

13:41:26 23 THE COURT: He can answer it yes or no.

13:41:29 24 A. Yes.

13:41:29 25 Q. And what was that understanding?



13:41:31 1 MS. ANDERSON: Same objections, Your Honor.

13:41:32 2 THE COURT: Sustained.

13:41:33 3 Q. (BY MR. STONE) Mr. Katis, as of March of 2012, did Voxer  
13:41:37 4 allow for live voice messaging?

13:41:38 5 A. Yes, it did.

13:41:39 6 Q. And did Facebook?

13:41:40 7 A. No, it did not.

13:41:41 8 Q. Now, after this communication in March of 2012, did there  
13:41:46 9 come a time when you learned or that you were learning some  
13:41:49 10 information about Facebook that made you think about your  
13:41:55 11 discussion with Mr. Daniels?

13:41:57 12 A. Yes, there was.

13:41:58 13 Q. And when was that?

13:42:01 14 A. If we can put up the timeline, please.

13:42:09 15 So in August of 2015, when Facebook first launched  
13:42:12 16 their first instance of Facebook Live, my gut impression was  
13:42:14 17 you know, there it is. That's sort of the -- it was the --  
13:42:20 18 that was what I was sort of afraid of. You know, here's this  
13:42:24 19 product that Facebook just launched that looks and acts a lot  
13:42:34 20 like Voxer's live messaging technology with video, which we all  
13:42:40 21 discussed with them. And here was their launch.

13:42:48 22 Q. And did you reach out to Facebook?

13:42:50 23 A. Yes, I did.

13:42:51 24 Q. And who did you reach out to?

13:42:55 25 A. Well, the people that I had -- I had these meetings with

13:43:00 1 previously, you know, were not going to return my call at this  
13:43:05 2 point. So I met the head of Facebook Messenger, a really nice  
13:43:09 3 guy by the name of Stan Chudnovsky at a ski trip in Canada and  
13:43:13 4 asked if we can get together. And we set up a meeting with him  
13:43:19 5 and also with David Marcus. So Stan was head of Facebook  
13:43:23 6 Messenger, and David Marcus was head of all messaging at  
13:43:29 7 Facebook, which included Messenger as well as WhatsApp.

13:43:33 8 Q. And did you meet?

13:43:34 9 A. Yes, I did.

13:43:35 10 Q. Where did you meet?

13:43:36 11 A. At Facebook headquarters.

13:43:38 12 Q. And what did you discuss?

13:43:40 13 A. So, you know, Facebook Live and Instagram Live, these  
13:43:43 14 weren't their areas. They were, you know, on the Messenger  
13:43:47 15 side of things. But that was -- these were the people that  
13:43:51 16 were sort of as high up in Facebook as I could get to try to  
13:43:55 17 have a friendly conversation.

13:43:57 18 And I congratulated them on the launch of Facebook  
13:44:00 19 Live, and I basically said, you know, I know you guys weren't  
13:44:04 20 here before when we had all these conversations, but there is a  
13:44:08 21 little bit of history. And we are, you know, the experts in  
13:44:12 22 this area of live messaging. We invented it. We patented it.  
13:44:19 23 And we'd love to discuss, you know, doing something with you  
13:44:23 24 guys, whether that's licensing or acquisition or anything else.  
13:44:27 25 We think we could add significant value.

13:44:29 1 Q. And how did you end that meeting?

13:44:32 2 A. I told Stan that I would send him an overview of our  
13:44:35 3 patent portfolio, and I asked him if he would send it on to the  
13:44:40 4 legal team at Facebook.

13:44:41 5 Q. And did you do that?

13:44:42 6 A. Yes, I did.

13:44:43 7 Q. And when did you do that?

13:44:45 8 A. The -- I don't know the exact date of the e-mail right.  
13:44:49 9 It was right after the meeting, in early 2016.

13:44:52 10 MR. STONE: And let's pull up Exhibit P-802. It's  
13:44:55 11 not admitted as of yet. Are you still objecting to this?

13:44:58 12 MS. ANDERSON: Your Honor, it is already admitted as  
13:45:00 13 802, 803, and 804.

13:45:04 14 MR. STONE: Okay. How about the cover e-mail?  
13:45:06 15 Sorry. One second. So if we could pull P-802. It is  
13:45:14 16 admitted.

13:45:14 17 THE COURT: I didn't understand you.

13:45:16 18 MR. STONE: Sorry. We're going to pull Exhibit  
13:45:19 19 P-802, which is now as I understand it admitted, Your Honor.

13:45:24 20 THE COURT: All right.

13:45:24 21 Q. (BY MR. STONE) Mr. Katis, do you recognize this e-mail?

13:45:27 22 A. Yes, I do.

13:45:28 23 Q. And what is this?

13:45:29 24 A. This is an e-mail right after the meeting from myself to  
13:45:38 25 Stan Chudnovsky at Facebook on February 4th, 2016.

13:45:41 1 Q. And there's -- are there attachments referenced in this  
13:45:45 2 e-mail?

13:45:45 3 A. Yes, there are. There's two.

13:45:51 4 Q. And did you send those as well?

13:45:53 5 A. Yes, I did.

13:45:54 6 MR. STONE: And if we could please pull up P-803,  
13:45:56 7 which is admitted.

13:45:57 8 Q. And Mr. Katis, what is this document?

13:46:00 9 A. So this is one of those two documents on the e-mail. This  
13:46:05 10 was sort of the overview deck of our overall patent strategies  
13:46:09 11 and the various patent families.

13:46:11 12 MR. STONE: And if we could pull up admitted Exhibit  
13:46:13 13 P-804, please.

13:46:14 14 Q. And do you recognize this?

13:46:15 15 A. Yes, I do.

13:46:21 16 Q. And what's this?

13:46:22 17 A. This is a summary of our patent portfolio. And, again,  
13:46:26 18 it's broken down into patent families since they -- you know,  
13:46:31 19 there were a lot of different patents that issued at different  
13:46:34 20 times. So we tried to organize them in a way that made sense  
13:46:40 21 into the distinct patent families.

13:46:41 22 Q. And did these documents specifically identify the patents  
13:46:46 23 asserted here?

13:46:47 24 A. No, they did not.

13:46:48 25 Q. What did they identify?

13:46:50 1 A. The -- the broader patent families. So patents are -- you  
13:46:55 2 know, you don't get all your patents all at once. And, you  
13:47:00 3 know, during the -- this is a -- you know, if you have an  
13:47:04 4 aggressive patent intellectual property strategy, it involves,  
13:47:07 5 you know, a series of patent families and multiple filings.

13:47:12 6 Q. Did Facebook respond to you providing them this  
13:47:14 7 information?

13:47:14 8 A. Excuse me?

13:47:15 9 Q. Did Facebook respond to your having provided them this  
13:47:20 10 information?

13:47:21 11 A. Yes. Stan replied.

13:47:22 12 Q. And did he respond favorably?

13:47:26 13 A. No, he did not.

13:47:28 14 Q. Let's show you what's been admitted as P-746.  
13:47:31 15 And what's this?

13:47:32 16 A. So this is -- so at the very top it's me replying to Stan.  
13:47:38 17 But immediately below that is Stan replying to my e-mail. So  
13:47:42 18 he's -- he's -- you know, you can read it here. Basically he's  
13:47:48 19 saying, you know, he thinks that we have a great IP, but he  
13:47:58 20 doesn't believe that they infringe and that Facebook has no  
13:48:00 21 interest.

13:48:01 22 Q. Now, when did Facebook roll out Facebook Live for  
13:48:03 23 everyone?

13:48:04 24 A. It was a couple of months after this.

13:48:08 25 Q. And what about Instagram Live?

13:48:09 1 A. It was a little while after that.

13:48:12 2 Q. Now, after Facebook and Instagram Live were rolled out to  
13:48:15 3 the public, did they ever offer to pay Voxer for a license?

13:48:19 4 A. No, they did not.

13:48:21 5 Q. And did you have any further interactions with Facebook?

13:48:27 6 A. I did not personally.

13:48:28 7 Q. Now, why did you file this lawsuit?

13:48:30 8 A. I mean, you know, we believe that Facebook Live and  
13:48:36 9 Instagram Live used Voxer's technology, and we believe that we  
13:48:40 10 should be compensated in some way. We believe this is sort of  
13:48:44 11 a -- this is sort of a case that the patent system was sort of  
13:48:48 12 made for. And, you know, it's -- as everybody knows, it's  
13:48:55 13 tough as a small company to compete against a company like  
13:49:00 14 Facebook. They're a great company.

13:49:03 15 MS. ANDERSON: Objection, Your Honor: move to strike  
13:49:05 16 as nonresponsive and 403.

13:49:07 17 THE COURT: Sustained. The jury will disregard the  
13:49:09 18 last statement.

13:49:10 19 THE WITNESS: It's --

13:49:11 20 THE COURT: Wait. When I --

13:49:12 21 MR. STONE: There's a question pending.

13:49:14 22 THE COURT: Let him come back to you and ask a new  
13:49:18 23 question.

13:49:19 24 THE WITNESS: Yes, sir.

13:49:20 25 Q. (BY MR. STONE) What about -- was your decision to file the

13:49:24 1 lawsuit related in any way to your shareholders?

13:49:27 2 A. Yes. Obviously, I have a responsibility to my  
13:49:31 3 shareholders, so I had to hang in there and see this through to  
13:49:39 4 try to -- you know, at the end of the day, it's to try to right  
13:49:42 5 a wrong, you know, that we perceive.

13:49:45 6 MR. STONE: I'm going to pass the witness,  
13:49:47 7 Your Honor.

13:49:48 8 MS. ANDERSON: Thank you, Your Honor. If I could  
13:49:50 9 have a moment to get this set up?

13:49:52 10 THE COURT: You may.

13:49:54 11 MS. ANDERSON: Thank you.

13:49:55 12 I'll get this higher up for Your Honor so I'm a  
13:49:57 13 little louder.

13:49:59 14 THE COURT: Well, I keep thinking I'm going to  
13:50:01 15 rearrange this courtroom back to pre-plague days, but I haven't  
13:50:05 16 gotten it done yet.

13:50:12 17 MS. ANDERSON: Your Honor, may I approach with some  
13:50:15 18 binders for the court and the witness?

13:50:16 19 THE COURT: You may approach, and I will tell this to  
13:50:21 20 all the lawyers. In my court you don't have to ask to approach  
13:50:24 21 the witness. If you have business with the witness, go to the  
13:50:26 22 witness, get your business over, and go back to the counsel  
13:50:29 23 table. If I think you're badgering the witness, believe me, I  
13:50:48 24 won't have any hesitancy to say anything about it. It will  
13:50:51 25 just go more quickly that way.

**CROSS-EXAMINATION**

**BY MS. ANDERSON:**

Q. All right. Good afternoon, Mr. Katis.

A. Good afternoon.

Q. Good to see you again, sir.

A. Good to see you.

Q. Before you begin, we would like to thank you for your service, your two tours of your duty. We thank you for the service you've given this country?

THE COURT: Pardon me. Just for our record, state your name again.

MS. ANDERSON: Oh. Thank you, Your Honor. Christa Anderson for Facebook and Instagram.

Q. All right. Mr. Katis, I'd like to begin with your patents, if you can. And you have a binder before you. I have some exhibits in there that I may ask you to turn to them from time to time. And also we'll have your exhibits posted on the screen before you from time to time as well.

MS. ANDERSON: If we could please take a look at Exhibit P-3 and put it up please. This is an already-admitted exhibit.

Q. Mr. Katis, you testified earlier this is your '270 patent, correct?

A. That is correct.

Q. All right. And this patent issued on November 27th, 2018,



13:52:11 1 right? That's the date in the top, right?

13:52:18 2 A. That is correct.

13:52:19 3 Q. All right. And the file date for the application for this

13:52:23 4 patent is May 2nd, 2017; is that right?

13:52:26 5 A. I'll take your word for it.

13:52:28 6 Q. Do you see the highlighted date at line 22?

13:52:32 7 A. Yes, I do.

13:52:33 8 Q. Okay. Great.

13:52:35 9 MS. ANDERSON: Now let's turn to Exhibit P-4, if we

13:52:37 10 may.

13:52:37 11 Q. Exhibit P-4 is your '557 patent, right, sir?

13:52:43 12 A. That is correct.

13:52:44 13 Q. And the '557 patent issued on December 71th, 2019,

13:52:53 14 correct?

13:52:53 15 A. That is correct.

13:52:55 16 Q. All right. And the file date for the application for the

13:52:58 17 '557 patent is October 16th, 2018; is that right?

13:53:06 18 A. That is correct.

13:53:06 19 Q. So these applications and patents issued between 2017 and

13:53:11 20 2019, right?

13:53:13 21 A. That is correct.

13:53:13 22 Q. All right. Now, the 2012 meetings that you've testified

13:53:18 23 about in this case so far, the ones that occurred with

13:53:23 24 Mr. Schroepfer and others at Facebook, those occurred more than

13:53:27 25 five years before those dates that we've been talking about,

13:53:30 1 right?

13:53:31 2 A. Correct. Although we had plenty of patents back then of  
13:53:36 3 these same patent families.

13:53:38 4 Q. And, Mr. Katis, the patents we're talking about right now,  
13:53:41 5 the '270, and '557, those ones issued more than five years  
13:53:46 6 after the 2012 discussions, right?

13:53:48 7 A. Yes. But they're part of patent families.

13:53:52 8 Q. Now, you mentioned in your earlier testimony, sir, that,  
13:53:56 9 in 2012, in some of those discussions that Voxer  
13:53:59 10 representatives told Facebook about applications for patents or  
13:54:03 11 actual patents. Do you recall that?

13:54:05 12 A. Yes.

13:54:05 13 Q. All right. Whatever patent applications or patents you  
13:54:09 14 are talking about in 2012, those did not include the ones we  
13:54:13 15 just referenced in Exhibit P-3 and P-4, right?

13:54:17 16 A. That is correct. It's not practical to sue for 150  
13:54:21 17 patents.

13:54:22 18 Q. And, in fact, during your discussions with Facebook in  
13:54:25 19 2012, you did not specify any particular patent numbers or  
13:54:29 20 patent applications, right?

13:54:33 21 A. That's correct.

13:54:33 22 Q. You didn't call out any particular numbers for patents,  
13:54:38 23 right?

13:54:39 24 A. That's correct.

13:54:39 25 Q. And you also said that the discussions that you had with

13:54:43 1 Facebook in the 2012 time frame, and before that, generally  
13:54:50 2 concerned the Voxer app. Do you recall your testimony?

13:54:52 3 A. No. That's misleading.

13:54:57 4 Q. Okay. Sir, did you ever discuss the Voxer app in your  
13:55:01 5 2010 and 2012 discussions?

13:55:02 6 A. Yes.

13:55:03 7 Q. You did. And the Voxer app that you were discussing in  
13:55:06 8 that time frame was not using the inventions of the '270 and  
13:55:10 9 '557 patents that have been asserted against Facebook in this  
13:55:14 10 case, right?

13:55:15 11 A. The -- these patents are part of patent families that  
13:55:19 12 Voxer absolutely utilizes.

13:55:22 13 Q. Okay. I'd just like to clarify, sir. I'm only talking  
13:55:27 14 about the patents-in-suit in this case, the '270 and the '557,  
13:55:32 15 okay?

13:55:33 16 Do you agree that the Voxer app does not practice the  
13:55:38 17 '270 and '557 patent claims that have been asserted against  
13:55:43 18 Facebook in this case?

13:55:45 19 A. I disagree.

13:55:45 20 MR. STONE: Your Honor, I object. She's seeking what  
13:55:48 21 would be expert testimony, potentially.

13:55:49 22 THE COURT: I didn't understand you, your voice  
13:55:51 23 trailed off.

13:55:52 24 MR. STONE: Objection: She's seeking expert  
13:55:56 25 testimony.

13:55:57 1 THE COURT: No. She's cross-examining him, and he  
13:56:02 2 knows about his patents and he testified about his patents.  
13:56:05 3 The objection is overruled. You may proceed.

13:56:07 4 A. The -- these patents are part of families that the Voxer  
13:56:11 5 app absolutely is an implementation of the technology that's  
13:56:16 6 described in these patents.

13:56:18 7 Q. Sir, I'd like you to focus on my question. I am not  
13:56:23 8 asking you about patent families. My question to you is:  
13:56:29 9 Isn't it true that the Voxer app has never practiced the  
13:56:33 10 asserted claims of the '270 patent?

13:56:38 11 A. I can't state that. I don't agree with that statement.

13:56:41 12 Q. You don't know either way; is that right?

13:56:44 13 A. That would not seem to be the case to me.

13:56:46 14 Q. All right. Sir, I'd like you to take a look at, if you  
13:56:50 15 would, in your binder an exhibit that has been marked as  
13:56:53 16 DTX305.

13:56:56 17 MS. ANDERSON: Your Honor, this is not admitted, so  
13:56:58 18 if I could just publish it to the witness, that would be great.

13:57:01 19 THE COURT: You may publish to the witness only.

13:57:05 20 Q. (BY MS. ANDERSON) Mr. Katis, you are aware as a  
13:57:07 21 representative of Voxer in this litigation that Voxer had to  
13:57:10 22 answer questions put to it in the court proceedings about Voxer  
13:57:13 23 and this app. Do you recall that, generally?

13:57:15 24 A. When was this?

13:57:16 25 Q. Are you familiar with the fact that Voxer responded to

13:57:19 1 interrogatories in this case?

13:57:20 2 A. I mean, this is something that happened between the  
13:57:31 3 attorneys and this, right?

13:57:32 4 Q. Okay. So is it your testimony that you have never seen  
13:57:37 5 Exhibit DTX305?

13:57:38 6 A. I don't recall ever seeing this, yes.

13:57:43 7 Q. All right. Sir, do you agree with the fact that the Voxer  
13:57:48 8 app has never provided the ability to send real-time video  
13:57:54 9 messaging? That's true, right?

13:57:55 10 A. In terms of video, the -- the system can enable it, but  
13:58:00 11 the apps -- it's not currently enabled in the apps. It is --  
13:58:06 12 it is built into the overall system, but we never enabled it.

13:58:12 13 Q. So, sir, it is correct that the Voxer product never  
13:58:15 14 provided the ability to send real-time video messages, right?

13:58:19 15 A. Not to end consumers.

13:58:23 16 MS. ANDERSON: Okay. Can we please play the  
13:58:25 17 testimony of Mr. Tom Katis, page 222, lines 4 through 21.

13:58:29 18 MR. STONE: Can I can see it, please?

13:58:30 19 MS. ANDERSON: Excuse me. Page 222, lines 4  
13:58:33 20 through 7. Excuse me.

13:58:35 21 And, actually, Your Honor, I'm going to withdraw the  
13:58:39 22 question.

13:58:40 23 Q. Sir, do you agree that the Voxer app currently does not  
13:58:43 24 enable the sending of real-time video messages?

13:58:48 25 A. I agree with that.

13:58:50 1 Q. All right. Thank you.

13:58:53 2 Sir, real-time video communication is a requirement  
13:58:56 3 for all the asserted claims in this case; is that right?

13:59:16 4 A. Yes. Just for point of clarification, the server  
13:59:20 5 absolutely enables it. The current implementation of the apps  
13:59:24 6 does not.

13:59:24 7 MS. ANDERSON: Move to strike as nonresponsive,  
13:59:26 8 Your Honor, the clarification statement.

13:59:27 9 THE COURT: Sustained.

13:59:29 10 Q. (BY MS. ANDERSON) Now, Mr. Katis, you testified earlier  
13:59:32 11 about a provisional application filed with the Patent and  
13:59:36 12 Trademark Office in 2007. Do you recall that?

13:59:39 13 A. Yes, I do.

13:59:40 14 Q. And that was Exhibit P-5?

13:59:42 15 A. Hold on.

13:59:43 16 Q. Do you recall that?

13:59:44 17 MS. ANDERSON: If we could have that up on the  
13:59:46 18 screen, please. That one has been admitted.

13:59:49 19 A. Yes.

13:59:49 20 Q. Let's take a look at this on the screen. Do you recall  
13:59:53 21 this provisional application, sir?

13:59:55 22 A. Yes, I do.

13:59:56 23 Q. Thank you. And if we could turn your attention to page 3  
14:00:02 24 of the exhibit, and this exhibit is paginated at the bottom.

14:00:05 25 A. Five, dash, 3?

14:00:06 1 Q. Yes, please. Five, dash, 3.

14:00:07 2 And the submission you made was entitled "Rethinking  
14:00:10 3 Voice Communication," right.

14:00:17 4 A. That's correct.

14:00:18 5 Q. And it indicates that this paper that we're reading from  
14:00:21 6 was authored by you and Mr. Ranney; is that right?

14:00:25 7 A. That's correct.

14:00:26 8 Q. Okay. And if you could turn to the next page, page 4, of  
14:00:32 9 your exhibit. You see your description of your invention,  
14:00:35 10 right?

14:00:35 11 A. Yes, I do.

14:00:36 12 Q. All right. You authored this along with Mr. Ranney,  
14:00:40 13 right?

14:00:40 14 A. That's correct.

14:00:41 15 Q. And you see listed on this page critical components. Do  
14:00:45 16 you see that?

14:00:46 17 A. Yes, I do.

14:00:47 18 Q. About the middle of the page, critical components of your  
14:00:52 19 invention?

14:00:52 20 A. Yes, I do.

14:00:53 21 MS. ANDERSON: Could we highlight that, please?

14:00:55 22 Q. And drawing your attention to the list of critical  
14:00:58 23 components, you see the third item --

14:01:01 24 MS. ANDERSON: If we could highlight that, please.

14:01:03 25 Q. -- you identify as a critical component, quote, stream and

14:01:06 1 store protocol, streaming voice video or other media as quickly  
14:01:10 2 as possible while still guaranteeing delivery, even when  
14:01:19 3 network conditions are poor, end quote.

14:01:22 4 Do you see that?

14:01:23 5 A. Yes.

14:01:23 6 Q. And you identified that to the Patent and Trademark  
14:01:28 7 Office, right?

14:01:29 8 A. In our first provisional, yes.

14:01:31 9 Q. Right. And let's take a look at page 16 of this exhibit  
14:01:35 10 as well. So that would be page 5-16.

14:01:39 11 On this page, sir, you have identified at the top,  
14:01:43 12 you call it "prototype features." Do you see that?

14:01:46 13 A. Correct, yes.

14:01:47 14 Q. And these are prototype features of your invention, right?

14:01:51 15 A. Yeah. Potential prototype features.

14:01:53 16 Q. Okay. And then the third bullet point of the third  
14:01:58 17 feature identified in a bullet point is here is, quote, all  
14:02:07 18 communications are delivered reliably to the intended recipient  
14:02:12 19 using the CT store and stream technology. This means that all  
14:02:16 20 messages will be stored on both clients and servers, though  
14:02:20 21 they will be available for consumption or propagation while the  
14:02:23 22 message is being received, end quote.

14:02:26 23 Do you see that?

14:02:27 24 A. Yes, I do.

14:02:28 25 Q. And that was another statement you submitted to the Patent



14:02:31 1 and Trademark Office, right?

14:02:33 2 A. Yes. And I think it does a reasonable job of describing  
14:02:35 3 the nature of live messaging to some degree.

14:02:38 4 Q. Thank you.

14:02:38 5 A. Obviously it's a very early terminology.

14:02:41 6 Q. Thank you. Now, if you would, sir, we're going to take a  
14:02:43 7 look at Exhibit P-6.

14:02:44 8 MS. ANDERSON: If we could have that up, please.

14:02:46 9 Q. This was the other provisional application you testified  
14:02:50 10 about earlier, correct, sir?

14:02:51 11 A. Yes.

14:02:52 12 Q. Okay. And if we could take a look at page 13, so it's  
14:02:58 13 6-13 of this exhibit. I believe you were looking at this page  
14:03:02 14 earlier during your testimony; is that right?

14:03:04 15 A. Yes.

14:03:04 16 Q. Okay. And it's entitled "RebelVox Market Overview," and  
14:03:10 17 you talk about target market description. Do you see that?

14:03:12 18 A. Yes, I do.

14:03:18 19 Q. And do you see in the second paragraph you say, "RebelVox  
14:03:23 20 provides significant functionality and value to the following  
14:03:26 21 markets and application spaces, including but not limited to."

14:03:30 22 Do you see that?

14:03:32 23 A. Yes, I do.

14:03:34 24 Q. Okay. And then listed Number 6 --

14:03:38 25 MS. ANDERSON: If we could highlight that, please.

14:03:40 1 Q. -- you identify tactical communications where control,  
14:03:45 2 message management, replay, pause, catch up to live, archiving,  
14:03:49 3 guaranteed delivery, and sophisticated routing can enable a  
14:03:53 4 more robust and safe response to tactical situations, end  
14:04:02 5 quote.

14:04:03 6 I've read that correct correctly, right?

14:04:06 7 A. Yes.

14:04:06 8 Q. And you submitted that to the Patent and Trademark Office  
14:04:10 9 as well, correct?

14:04:10 10 A. Yes. As part of the provisional.

14:04:12 11 Q. Thank you. All right. We can set that aside now.

14:04:16 12 Now, you testified earlier about discussions  
14:04:19 13 concerning the possibility of Facebook paying some form of  
14:04:22 14 money for Voxer technology. Do you recall generally your  
14:04:24 15 testimony?

14:04:25 16 A. Yes.

14:04:25 17 Q. Back in the 2011 and 2012 time frame, Facebook was not the  
14:04:30 18 only company that Voxer was willing to talk to about a possible  
14:04:32 19 deal in that regard, right?

14:04:36 20 A. I'm not sure what you're getting at. I mean, Facebook was  
14:04:43 21 the only company that had been that aggressive about pursuing  
14:04:47 22 us.

14:04:47 23 Q. Do you agree, sir, that Facebook wasn't the only company  
14:04:51 24 that Voxer was willing to consider talking about a possible  
14:04:56 25 money deal with about IP at the time, right?

14:05:00 1 A. Well, I think you're specifically referring to a company  
14:05:02 2 that we would sell to or do a major deal with like we  
14:05:05 3 described.

14:05:06 4 Q. Well, at the time, 2011-2012 time frame, you expected to  
14:05:11 5 meet other companies who might want to purchase or otherwise  
14:05:14 6 pay money to Voxer for intellectual property, right?

14:05:19 7 A. Yes. It was pretty much all inbound at this point because  
14:05:22 8 we were such a popular app, so we were happy to talk all the  
14:05:26 9 biggest tech firms.

14:05:27 10 Q. Great. So let's take a look at Exhibit P-743, which is  
14:05:32 11 already admitted.

14:05:33 12 Mr. Katis, this is an e-mail we looked at before, an  
14:05:37 13 e-mail from you to Mr. Matt Ranney.

14:05:39 14 A. Yes.

14:05:39 15 Q. And drawing your attention to the top e-mail where you  
14:05:42 16 write, "In the next two weeks, we'll be meeting with Facebook,  
14:05:46 17 Google, and most of the top VCs for initial meetings. I don't  
14:05:50 18 know where this is going to go. I'm open to anything."

14:06:01 19 Those were your words to Mr. Ranney at the time,  
14:06:07 20 right?

14:06:07 21 A. That's correct.

14:06:07 22 Q. And then drawing your attention down a second sentence  
14:06:11 23 below, "Even if we do not want to sell ASAP, we would not want  
14:06:14 24 to appear frantic." Do you see that?

14:06:17 25 A. Yes, I do.

14:06:18 1 MS. ANDERSON: And if we could highlight the "even  
14:06:21 2 if" sentence, Mr. Fisher, that would be great as well.

14:06:25 3 Thank you.

14:06:25 4 Q. And that was a communication you had internally at Voxer  
14:06:33 5 in the 2011 time frame, right?

14:06:35 6 A. Yes. This is an e-mail from me to Matt Ranney.

14:06:37 7 Q. All right. And at this time, in your words, you were  
14:06:40 8 expecting to meet with basically the whole world about your  
14:06:44 9 app, right?

14:06:48 10 A. It appeared that way at the time. There was a lot of  
14:06:51 11 inbound.

14:06:52 12 Q. Okay. And specifically as related to Facebook, you've  
14:06:54 13 said that you were hoping to enter a deal with Facebook, any  
14:06:57 14 kind of deal, including potentially licensing intellectual  
14:07:01 15 property, right?

14:07:02 16 A. Yeah. I wouldn't say any type of a deal, but there were  
14:07:07 17 definitely deals that we would have contemplated, sure.

14:07:13 18 Q. Right. But not a single company has entered an agreement  
14:07:16 19 to pay money for a license to Voxer's intellectual property,  
14:07:20 20 right?

14:07:20 21 A. We have lots of customers who license our technology. I  
14:07:24 22 think what you're confusing is we haven't sold the business to  
14:07:27 23 anybody else. Like, that was super-confusing in the opening  
14:07:30 24 statements where you're saying "not a single." We have  
14:07:32 25 hundreds, hundreds of customers who license our technology.

14:07:36 1 Hundreds. And what the confusion is that you're claiming that  
14:07:39 2 we didn't sell the company or, like, its whole patent portfolio  
14:07:44 3 to someone. That's correct. We didn't sell the company. We  
14:07:49 4 didn't do a deal like we contemplated with Facebook. But we  
14:07:52 5 have hundreds of companies who license our technology.

14:07:54 6 Q. Okay. Mr. Katis, would you please turn to Defendant's  
14:07:58 7 Exhibit 609. This is Voxer's supplemental objections and  
14:08:03 8 response to Defendant Facebook's interrogatories.

14:08:06 9 Do you see that?

14:08:07 10 A. I'm looking for it. You said 609?

14:08:10 11 Q. Yes. DTX609, please.

14:08:13 12 A. Okay.

14:08:14 13 Q. Do you have that before you?

14:08:15 14 A. I do.

14:08:16 15 Q. All right. And turning your attention to page 11 of 12,  
14:08:25 16 this is a document that was submitted to Facebook in this  
14:08:28 17 matter and signed by your counsel, right?

14:08:32 18 A. That's correct.

14:08:34 19 Q. All right. Now, please turn, if you would, to page 5  
14:08:39 20 where it says Interrogatory Number 7. Do you see that? Sort  
14:08:48 21 of towards the bottom of that page 5.

14:08:50 22 A. Number 7. Yes, I do.

14:08:52 23 Q. And do you see the question that starts, "Identify all  
14:08:55 24 current and former licensees of the patents-in-suit." Do you  
14:09:00 25 see that?

14:09:00 1 A. Yes, I do.

14:09:07 2 Q. All right. And if you would, please, sir, turn to the  
14:09:11 3 next page, page 6. Do you see where it says, "Response to  
14:09:17 4 Interrogatory Number 7"?

14:09:19 5 A. Yes.

14:09:19 6 Q. And you see Voxer makes some statements there, but I'd  
14:09:22 7 like to draw your attention to almost the end of page 6 there  
14:09:26 8 where it says, quote, At present, there are no current or  
14:09:29 9 former licensees of the patents-in-suit, end quote.

14:09:32 10 Do you see that?

14:09:32 11 A. So, just to clarify, as I said before, I've never seen  
14:09:36 12 this document before.

14:09:39 13 Q. Sir?

14:09:39 14 MS. ANDERSON: Your Honor?

14:09:40 15 A. But it would appear to me --

14:09:42 16 THE COURT: No. Just answer her question.

14:09:44 17 THE WITNESS: Sure. Yes, sir.

14:09:45 18 THE COURT: Your lawyer will have another opportunity  
14:09:46 19 to question you if he wants to elicit more information.

14:09:49 20 THE WITNESS: Yes, sir.

14:09:51 21 A. So that is what it says here.

14:09:54 22 Q. All right. Thank you, sir. Now, sir, in the  
14:09:58 23 2010-2011-2012 time frame, you knew that there were many  
14:10:02 24 reasons that a company like Facebook might decide that Voxer  
14:10:05 25 technology wasn't right for it, right?

14:10:07 1 A. Absolutely.

14:10:09 2 Q. Okay. And, in fact, if we could take a look at

14:10:12 3 Exhibit 752, which is already admitted, you talked about this

14:10:24 4 issue in the e-mail that you sent to Voxer employees on or

14:10:29 5 about August 17th, 2001, right?

14:10:32 6 A. Yes. It appears that way.

14:10:34 7 Q. Okay. And then drawing your attention to the paragraph

14:10:37 8 that's numbered 2, your discussing here the follow-up from a

14:10:49 9 meeting with Facebook. You say, quote, Don't get bent out of

14:10:52 10 shape on this. Regardless of how good a first meeting is,

14:10:59 11 these things usually go sideways for a long time. They have a

14:11:05 12 million things to figure out for their strategy, and trying to

14:11:11 13 fit it in a brand-new technology is hard. We will likely have

14:11:17 14 to prove things on our own before they will take a chance on

14:11:23 15 us. But now they are aware of us and will be watching. We

14:11:28 16 need to totally kick ass over the next few months and get the

14:11:31 17 app to a higher level, end quote.

14:11:33 18 Do you see that?

14:11:35 19 A. Yes, I do.

14:11:36 20 Q. All right. So you knew at the time that there were a

14:11:38 21 million things that would have to be figured out before any

14:11:41 22 deal could be done, right?

14:11:42 23 A. Absolutely. Especially because this was more than a year

14:11:46 24 before we launched.

14:11:47 25 Q. By the way, when we are still discussing this exhibit, if

14:11:51 1 I can draw your attention to the third numbered paragraph in  
14:11:55 2 this e-mail you spend a moment in this e-mail to congratulate  
14:11:58 3 one of your employees, right?

14:12:00 4 A. Yes.

14:12:00 5 Q. Yes. So one of your employees named Andy is being  
14:12:05 6 congratulated by you in this e-mail for pursuing Facebook in  
14:12:09 7 order to ultimately get a meeting set up between Voxer and  
14:12:14 8 Facebook in 2010. Do you see that?

14:12:16 9 A. Yeah. As I think I mentioned before, this meeting was  
14:12:21 10 based on a chance meeting of Andy.

14:12:23 11 Q. And you say in your e-mail, this third paragraph you say,  
14:12:26 12 quote, Andy got this meeting set up by networking with a friend  
14:12:31 13 of his who works at Facebook. This wasn't the first time Andy  
14:12:34 14 went there and met with him, end quote.

14:12:36 15 Do you see that?

14:12:37 16 A. Okay.

14:12:38 17 Q. Do you see that, sir?

14:12:39 18 A. I'm looking for the part --

14:12:43 19 Q. Oh, sure. It's the first two lines of paragraph 3?

14:12:47 20 A. I can see that, yes.

14:12:47 21 Q. Okay. That's what you said to Voxer, right?

14:12:50 22 A. Yes.

14:12:50 23 Q. And at the end you concluded that paragraph with, quote,  
14:12:55 24 Kudos to Andy for nailing this one, end quote. Right?

14:13:02 25 A. Yes. And I'll point out again this was more than a year



14:13:04 1 before we launched, and this was before all the inbound.

14:13:07 2 Q. And now even after your February 2012 meetings, you knew  
14:13:13 3 it was uncertain whether a deal could be done between the  
14:13:16 4 companies, right?

14:13:17 5 A. It's always uncertain, yes.

14:13:19 6 Q. Yeah. And even as of early March of 2012, you were still  
14:13:23 7 skeptical that any deal would work for both companies, right?

14:13:25 8 A. In general in business, business deals generally fall  
14:13:30 9 apart, and I never count on them until they happen.

14:13:34 10 Q. Yeah. All right. Now lets talk a little bit about --

14:13:38 11 MS. ANDERSON: Yeah. we can take that down.

14:13:38 12 Q. Let's talk a little bit about the intellectual property  
14:13:41 13 that you say Voxer was trying to market to Facebook and other  
14:13:46 14 companies. There are limits to what you say Voxer claims to  
14:13:50 15 have invented in communications. Wouldn't you agree?

14:13:53 16 A. Absolutely.

14:13:53 17 Q. All right. So, for example, Voxer did not invent  
14:14:00 18 livestreaming video, correct?

14:14:01 19 A. Right.

14:14:02 20 Q. Voxer did not invent instant messaging?

14:14:05 21 A. Correct.

14:14:06 22 Q. Voxer did not invent SMS, which is a form of text  
14:14:09 23 messaging, right?

14:14:10 24 A. Correct.

14:14:11 25 Q. Voxer did not invent push-to-talk, right?

14:14:13 1 A. No. We kind of reinvented it, but we didn't invent  
14:14:16 2 push-to-talk. There were many inventions before us.

14:14:19 3 Q. Voxer did not invent live voice communications either,  
14:14:22 4 right?

14:14:22 5 A. No. That's the telephone.

14:14:23 6 Q. Right. Voxer did not invent time-shifting of video or  
14:14:27 7 recording something live and watching something later?

14:14:29 8 A. No. VCRs and TIVOs, yeah.

14:14:32 9 Q. Right. They've been around. Voxer did not invent the  
14:14:33 10 concept of turning human-readable names into a recipient's IP  
14:14:38 11 address, right?

14:14:39 12 A. No.

14:14:39 13 Q. And, to be clear, I don't want double-negatives just in  
14:14:44 14 case.

14:14:44 15 A. So we did not invent that.

14:14:46 16 Q. You did not invent that.

14:14:48 17 A. To be clear, we did not invent that.

14:14:50 18 Q. Thank you, sir. And Voxer also didn't invent the domain  
14:14:53 19 name system technology, right?

14:14:54 20 A. We certainly did not invent that.

14:14:56 21 Q. Okay. Instead, when you were asked to describe what Voxer  
14:15:02 22 invented before this lawsuit, you said that Voxer -- Voxer  
14:15:05 23 invented turning your phone into a walkie-talkie, right?

14:15:08 24 A. That's simplified marketing speak. That's not -- has  
14:15:13 25 nothing to do with the nature of invention.

14:15:15 1 Q. You said that, though, right, sir?

14:15:16 2 A. I've called the app a walkie-talkie app even though I know  
14:15:23 3 it doesn't exactly work like a walkie-talkie. And we knew it  
14:15:26 4 was marketing speak and then technical speak, and then there's,  
14:15:29 5 separate from that, legal documents.

14:15:31 6 MS. ANDERSON: And if we could play clips from  
14:15:34 7 FBVOX0034084, which is an interview that Mr. Katis gave at the  
14:15:39 8 Le Web Conference.

14:15:40 9 MR. STONE: We haven't seen this.

14:16:37 10 (Video played)

14:16:37 11 UNIDENTIFIED SPEAKER: What is Voxer?

14:16:37 12 MR. KATIS: Sure. I mean, just simply, Voxer turns  
14:16:37 13 your phone into a walkie-talkie.

14:16:37 14 What we did invent was the ability to have them both  
14:16:20 15 be the same thing at the same time. So when you're speaking if  
14:16:24 16 somebody is listening to you, they hear you while you're  
14:16:27 17 speaking. They hear you live.

14:16:28 18 UNIDENTIFIED SPEAKER: Live.

14:16:28 19 MR. KATIS: Live. But whether they're listening or  
14:16:30 20 not, they're still getting it as a message.

14:16:33 21 (Video stopped)

14:16:33 22 Q. (BY MS. ANDERSON) All right. Let's move forward in time  
14:16:39 23 to the 2015 time frame. Facebook Live launched in or around  
14:16:45 24 late 2015, correct?

14:16:48 25 A. Yes. That's correct.

14:16:50 1 Q. And then you arranged for a meeting with Facebook  
14:16:54 2 representatives sometime around mid January 2016?

14:16:58 3 A. Sometime around then.

14:16:59 4 Q. All right. And you said that meeting was with Facebook's  
14:17:02 5 David Marcus and Stan Chudnovsky, correct?

14:17:05 6 A. That's correct.

14:17:05 7 Q. And during that meeting, you congratulated Facebook on  
14:17:10 8 launching Facebook Live, right?

14:17:11 9 A. Yes.

14:17:12 10 Q. All right. You also told Facebook that Facebook Live  
14:17:16 11 seems like a great product, right?

14:17:18 12 A. Yes.

14:17:19 13 Q. All right. And, soon thereafter, you sent the e-mail to  
14:17:24 14 Facebook that you described as on e-mail from yourself to  
14:17:29 15 Mr. Chudnovsky dated February 4, 2016. Do you recall that?

14:17:33 16 A. That's correct.

14:17:33 17 MS. ANDERSON: All right. If we could please,  
14:17:35 18 Mr. Fisher, display Exhibit P-802.

14:17:44 19 Q. And you went over this a little earlier with your counsel  
14:17:47 20 right, sir?

14:17:48 21 A. Yes.

14:17:48 22 Q. Exhibit P-802, this February 2016 e-mail that you sent, is  
14:17:55 23 the only written documentation you know of that Voxer ever  
14:18:00 24 provided to Facebook identifying any particular patent numbers  
14:18:04 25 in connection with discussions, right?

14:18:06 1 A. This is the only documentation of it, yes.

14:18:09 2 Q. All right. And you did make your e-mails and documents  
14:18:12 3 available to your counsel to produce in this case, right?

14:18:15 4 A. Yes.

14:18:16 5 Q. Now, let's take a look at your correspondence in this  
14:18:23 6 exhibit, drawing your attention to the two paragraphs of your  
14:18:27 7 e-mail.

14:18:28 8 A. Uh-huh.

14:18:29 9 Q. You state, quote, Here is an overview deck and a more  
14:18:34 10 detailed IP statement that highlights some of our key patents.  
14:18:39 11 As we discussed, we keep getting inbound interest. But if we  
14:18:44 12 go down that road, we'd rather start with someone like  
14:18:47 13 yourselves that we feel we share common values and culture  
14:18:51 14 with. I'm on Necker the next week but will follow up after.

14:18:57 15 That's what you wrote to Facebook on February 4,  
14:19:01 16 2016, right?

14:19:02 17 A. Yes. That's correct.

14:19:03 18 MS. ANDERSON: Could we pull blow that up, please,  
14:19:08 19 Mr. Fisher so it's a little bit easier to read, that would be  
14:19:10 20 great.

14:19:11 21 Q. Now, per your statement in this exhibit, you left for a  
14:19:15 22 visit to Necker after sending this e-mail; is that right?

14:19:19 23 A. It would appear so.

14:19:20 24 Q. And that's Richard Branson's private luxury island Necker?  
14:19:24 25 Is that the one?

14:19:25 1 A. It's also a retreat for a lot of tech people, including  
14:19:28 2 Facebook and former Facebook people, who I've visited with.

14:19:31 3 Q. But that's the island, the luxury island?

14:19:34 4 A. That is, yes. And where I met Stan Chudnovsky was a  
14:19:38 5 similar type of a trip to a ski lodge in British Columbia with  
14:19:42 6 a lot of other Facebook people there.

14:19:42 7 Q. Respectfully, sir, please concentrate on the question.

14:19:46 8 MS. ANDERSON: Your Honor, I move to strike,  
14:19:47 9 nonresponsive.

14:19:48 10 THE COURT: Sustained. The jury will disregard the  
14:19:50 11 last statement.

14:19:51 12 And, Mr. Katis, please just answer her questions and  
14:19:56 13 don't interject anything else.

14:19:58 14 THE WITNESS: Yes, sir. Okay. Yes, sir.

14:20:01 15 Q. (BY MS. ANDERSON) Now, sir, when you returned in February  
14:20:04 16 of 2016 from your trip to Necker, you went on a ski trip with a  
14:20:10 17 number of entrepreneurs and other people, including Facebook  
14:20:16 18 reps; is that right?

14:20:16 19 A. There were some Facebook personnel there, yes.

14:20:19 20 Q. Okay. And the other Facebook representatives that were on  
14:20:23 21 the ski trip were Mr. Stan Chudnovsky and Mr. Matt Pakes; is  
14:20:28 22 that right?

14:20:28 23 A. Yes.

14:20:29 24 Q. And you flew home from that trip with Mr. Pakes, right?

14:20:36 25 A. Yes.

14:20:37 1 Q. And during that ride, you asked Mr. Pakes questions about  
14:20:44 2 Facebook Live, right?

14:20:45 3 A. That's correct.

14:20:45 4 Q. All right. And you wanted to confirm your understanding  
14:20:48 5 of how it worked; is that right?

14:20:53 6 A. Yes.

14:20:54 7 Q. Okay. When you returned from your ski trip, you did  
14:20:57 8 ultimately get an answer from Facebook declining to enter into  
14:21:03 9 an intellectual property deal with you; is that right?

14:21:06 10 A. That's correct.

14:21:07 11 Q. And we talked about that a bit already, right?

14:21:10 12 A. Uh-huh.

14:21:11 13 Q. Let's take a look at Exhibit 746, please. So we're at  
14:21:27 14 P-746, please.

14:21:29 15 Now, this is the e-mail that we have discussed  
14:21:36 16 earlier in which Mr. Chudnovsky indicates that they're  
14:21:41 17 declining to enter into an agreement with Voxer regarding  
14:21:46 18 intellectual property; is that right?

14:21:48 19 A. That's correct.

14:21:49 20 Q. All right. And in this particular e-mail, Mr. Chudnovsky  
14:21:53 21 writes, quote, Hey, Tom and Irv. Hope all is well and  
14:21:59 22 apologize for the long wait. Our guys just finished looking at  
14:22:04 23 the portfolio. As you mentioned, you have great IP for the  
14:22:07 24 space that Voxer is in. That said, all of our properties are  
14:22:11 25 doing something completely different, and we currently have no

14:22:15 1 plans to extend into different territories. Would be happy to  
14:22:20 2 have lunch and talk more about Voxer, et cetera. But,  
14:22:23 3 currently, there isn't much appetite on our end, unfortunately.  
14:22:28 4 Tom, hope Necker was fun. Was great fun for me, end quote.  
14:22:33 5 That's the message you got from Mr. Chudnovsky in  
14:22:35 6 total there, right?  
14:22:36 7 A. That is correct.  
14:22:37 8 Q. All right. Now, you responded to his message in the top  
14:22:42 9 e-mail on Exhibit P-746, right?  
14:22:44 10 A. That's correct.  
14:22:46 11 Q. And in your response you do not accuse Facebook of  
14:22:50 12 infringing any patents, right?  
14:22:53 13 A. No, I do not.  
14:22:54 14 Q. You don't accuse Facebook of infringing '557 or the '270  
14:22:59 15 patent, right?  
14:23:01 16 A. No, I do not.  
14:23:01 17 Q. Instead, you state, "All good, Stan. Thanks for  
14:23:06 18 forwarding it on. Would love to grab lunch again sometime."  
14:23:10 19 Right?  
14:23:10 20 A. That's correct.  
14:23:12 21 Q. All right. Now, it was after these 2016 discussions we  
14:23:19 22 have just covered, Voxer moved forward and ended up submitting  
14:23:27 23 applications for new patents, the application filed for the  
14:23:31 24 '270 and the '557 patent, right?  
14:23:34 25 A. I believe it's a continual process.



14:23:36 1 Q. But those application dates we covered at the very  
14:23:39 2 beginning of your testimony, one was filed in 2017?

14:23:42 3 A. Correct.

14:23:42 4 Q. One was filed in 2018, right, sir?

14:23:45 5 A. Yes. Yes.

14:23:46 6 Q. All right. And in this case you agree with me, sir, that  
14:23:54 7 Voxer contends that Facebook first became aware of the '270  
14:23:59 8 patent and its issued claims on November 27, 2018; is that  
14:24:04 9 right?

14:24:05 10 A. Say that one more time.

14:24:07 11 Q. In this case Voxer contends that Facebook first became  
14:24:12 12 aware of the '270 patent and its issued claims on  
14:24:16 13 November 27, 2018, right?

14:24:19 14 A. Was that the published date? I'm not sure.

14:24:23 15 Q. That's the date of issuance?

14:24:25 16 A. Okay.

14:24:25 17 Q. And that's the date that Voxer claims Facebook was aware  
14:24:28 18 of the patent, right?

14:24:29 19 A. I mean, that's the date of issuance. I'm not sure what's  
14:24:33 20 been claimed in these.

14:24:34 21 Q. Okay. Let's take a look at DTX305 again. All right.  
14:24:46 22 And, sir, again these are responses served by Voxer to Facebook  
14:24:51 23 in this case regarding the allegations made by Voxer against  
14:24:55 24 Facebook, right?

14:24:57 25 A. Yes.

14:24:58 1 Q. All right. Drawing your attention to a little bit farther  
14:25:02 2 back in the document this time, page 33. Are you there yet?

14:25:18 3 A. I'm at page 33.

14:25:20 4 Q. Wonderful. And you see that this question generally is  
14:25:24 5 asking for facts and circumstances, including without  
14:25:27 6 limitation, the date on which you contend that Facebook first  
14:25:30 7 became aware of the patents-in-suit and its claims.

14:25:33 8 Do you see that?

14:25:34 9 A. Yes, I do.

14:25:34 10 Q. All right. If you could turn now -- there's a lot of  
14:25:39 11 lawyer language in here. But if you could turn your attention  
14:25:42 12 to page 36, the second full paragraph, the second sentence,  
14:25:49 13 Voxer writes, quote, Voxer contends that Facebook first became  
14:25:52 14 aware of the '270 patent and its issued claims on November 27,  
14:25:57 15 2018. Right?

14:25:58 16 A. That's what it says.

14:26:00 17 Q. That's what it says. And that's more than three years  
14:26:02 18 after Facebook launched the Facebook Live product, right?

14:26:06 19 A. That's correct.

14:26:07 20 Q. Okay. And then drawing your attention to the next page,  
14:26:10 21 the first full paragraph, the second sentence, you see it says:  
14:26:15 22 "Voxer contends that Facebook first became aware of the '557  
14:26:19 23 patent and its issued claims on December 17th, 2019."

14:26:23 24 Do you see that?

14:26:25 25 A. Sorry. I was reading the sentence before it.

14:26:27 1 Q. Oh, sure.

14:26:28 2 A. I thought you were reading that one.

14:26:30 3 So, yes, I can see that.

14:26:32 4 Q. And that's more than four years after Facebook Live  
14:26:36 5 launched, right?

14:26:38 6 A. Yes.

14:26:39 7 Q. Yes. Thank you. All right. You can set that aside.

14:26:43 8 Now, Mr. Katis, you are aware that, in 2012 -- jump  
14:26:52 9 back in time just for a moment here. In 2012 Voxer's head of  
14:26:58 10 product management criticized Voxer for suffering from a lack  
14:27:02 11 of focus, right?

14:27:04 12 A. No. Can you show me what you're talking about.

14:27:06 13 Q. Are you aware of that, sir?

14:27:08 14 A. No. If you could show me what you're referring to?

14:27:11 15 Q. Okay. Sure. Be happy to.

14:27:36 16 MS. ANDERSON: And I'll bring a few copies for the  
14:27:38 17 Court.

14:27:59 18 Q. Okay. I am showing you what has been marked for  
14:28:02 19 identification as DTX619, Bates Number Voxer-0037499 through  
14:28:16 20 37502. Let's take a look at this for a moment, and I have a  
14:28:22 21 couple of questions for you, sir.

14:28:56 22 Sir, we're not going to be publishing this e-mail,  
14:28:59 23 but it's just being shown to you on the screen. This is an  
14:29:04 24 e-mail that you received from Mr. Igal Perelman on April 24,  
14:29:10 25 2012, right?

14:29:11 1 A. Uh-huh.

14:29:12 2 Q. And Mr. Perelman was the head of product management for

14:29:15 3 Voxer back then, right?

14:29:16 4 A. That's correct.

14:29:17 5 Q. And drawing your attention to paragraph 4, he tells you

14:29:26 6 that, quote, While we are doing much better, we still suffer

14:29:29 7 from lack of focus, end quote.

14:29:32 8 A. That's pretty much a problem at every company, ever.

14:29:35 9 Q. Sir, just focus on the question. That's what he told

14:29:39 10 you --

14:29:39 11 A. Okay.

14:29:40 12 Q. -- on April 24, 2012, right?

14:29:42 13 A. Where is it that he says that, exactly?

14:29:46 14 Q. Sure. Paragraph 4.

14:29:47 15 A. Okay.

14:29:47 16 Q. The first sentence of it. It's a numbered paragraph.

14:29:50 17 Mr. Perelman writes to you and says, quote, While we are doing

14:29:55 18 much better, we still suffer from lack of focus, end quote.

14:29:58 19 Right?

14:29:58 20 A. Yes.

14:29:58 21 Q. And that's what your head of product management was

14:30:01 22 telling you about the development of the product, right?

14:30:04 23 A. Yeah. We can always be better.

14:30:06 24 Q. And then he says a few sentences later, quote, We cannot

14:30:10 25 have many top priorities, end quote. Right?

14:30:14 1 A. Correct.

14:30:14 2 Q. And then drawing your attention down to the numbered  
14:30:19 3 paragraph 5, you see where he writes, quote, At times I feel  
14:30:27 4 that we are on an awesome use case but without an awesome  
14:30:32 5 product yet, end quote. Do you see that?

14:30:34 6 A. Now, where was that?

14:30:35 7 Q. It's the last sentence of the numbered paragraph 5. Do  
14:30:38 8 you see that, sir?

14:30:39 9 A. Numbered paragraph -- okay. I see -- well, on this page  
14:30:42 10 or the next page?

14:30:43 11 Q. It's the first page, sir, numbered paragraph 5.

14:30:48 12 A. (Reviews document). Okay. Yes.

14:30:54 13 Q. Okay. And that's what he was telling you in 2012, right?

14:30:57 14 A. Correct. In an e-mail.

14:31:01 15 Q. Okay. Thank you.

14:31:02 16 A. Okay.

14:31:03 17 Q. You can set that aside, sir.

14:31:05 18 A. Okay.

14:31:05 19 Q. Mr. Katis, you have been the primary source of funds for  
14:31:09 20 Voxel, correct?

14:31:11 21 A. That's correct.

14:31:12 22 Q. You have invested at least \$40 million in the company,  
14:31:16 23 right?

14:31:17 24 A. As crazy as that sounds, that is the case.

14:31:20 25 Q. And that money came from almost \$100 million you were paid

14:31:23 1 from your work with the Triple Canopy company; is that correct?

14:31:29 2 A. It was probably closer to 80, but yeah.

14:31:31 3 Q. And Triple Canopy was the company you were describing in  
14:31:34 4 the testimony you gave to your counsel, right?

14:31:36 5 A. That's correct.

14:31:37 6 Q. Now, Triple Canopy was not in the business of offering  
14:31:42 7 messaging apps to the public, right?

14:31:44 8 A. Correct.

14:31:44 9 Q. All right. Instead, as you said, it was a private  
14:31:47 10 security company, and it had merged with a successor entity to  
14:31:52 11 Blackwater, right?

14:31:53 12 A. So eventually we did merge after Blackwater collapsed, and  
14:32:00 13 then they were acquired by a group of individuals in Texas who  
14:32:04 14 they basically turned them into a training business. They were  
14:32:07 15 basically at that point a training site in North Carolina.

14:32:10 16 Q. Okay. Thank you, sir. And today you're the largest  
14:32:14 17 shareholder in Voxer, right?

14:32:15 18 A. In Voxer, yes.

14:32:16 19 Q. And, as a shareholder, you have a financial interest in  
14:32:19 20 the outcome of this litigation. Fair?

14:32:21 21 A. Yes.

14:32:22 22 MS. ANDERSON: All right. Pass the witness. Thank  
14:32:24 23 you, sir.

14:32:25 24 THE COURT: Redirect, counsel?

14:32:29 25 MR. STONE: Yes, Your Honor.

**REDIRECT EXAMINATION**

**BY MR. STONE:**

Q. Now, Mr. Katis, do you recall some testimony that counsel elicited about their not being licenses to the patents-in-suit?

A. Yes.

Q. And the patents-in-suit are the '557 and the '270 patent?

A. Yes.

Q. Voxer does have licenses to its live messaging technology?

A. Yes.

Q. Other than those patents?

A. Yes.

MS. ANDERSON: Objection, Your Honor: Leading.

THE COURT: Sustained. Don't lead the witness.

MR. STONE: Pardon me?

THE COURT: Don't lead the witness.

MR. STONE: Thank you, Your Honor.

Q. Do you recall your testimony about what Voxer didn't invent?

A. What Voxer did not invent? Yes, I recall that testimony.

Q. Did you and Mr. Ranney and the other coinventors invent the subject matter of the '270 patent?

A. Yes, we did.

Q. Did the patent office agree?

A. Yes, they did.

Q. And did those patents issue?

14:33:23 1 A. Yes, they did.

14:33:24 2 Q. And did you and Mr. Ranney and the other inventors invent  
14:33:28 3 the subject matter of the '557 patent?

14:33:31 4 A. Yes, we did.

14:33:31 5 Q. And did the patent office agree?

14:33:33 6 A. Yes, they did.

14:33:34 7 Q. Now, there was a question about when Voxer contended  
14:33:45 8 that -- that Facebook first become aware of the '270 patent.  
14:33:49 9 Do you remember that?

14:33:50 10 A. Yes, sir. I remember that.

14:33:52 11 Q. And did you see that exhibit that they put up in front of  
14:33:56 12 you?

14:33:56 13 A. Yes, I did.

14:33:57 14 MR. STONE: And could we pull up DTX305. And could  
14:34:07 15 we pull up the page DTX305, page 36 of 100. It's not in  
14:34:18 16 evidence.

14:34:19 17 Q. Do you have that document in front of you?

14:34:22 18 A. I have it in front me, yes.

14:34:24 19 Q. And what's the sentence before the sentence relating to  
14:34:27 20 when Voxer contends Facebook was first aware of the '270  
14:34:31 21 patent?

14:34:32 22 MS. ANDERSON: Objection, Your Honor: foundation.  
14:34:34 23 This witness doesn't have the foundation for testifying to the  
14:34:37 24 previous sentence.

14:34:39 25 MR. STONE: It's cross on the subsequent sentence,



14:34:41 1 Your Honor. I'm just adding this for completeness.

14:34:45 2 MS. ANDERSON: Your Honor, it is also hearsay.

14:34:47 3 They're admissions when taken on cross. But on direct these  
14:34:51 4 are hearsay, and they lack foundation for this witness.

14:34:55 5 THE COURT: Counsel?

14:34:57 6 Q. (BY MR. STONE) Let me ask it this way: Did you have an  
14:35:00 7 understanding that Facebook, in connection with your meetings  
14:35:03 8 with them in 2012, was aware of the patents you had pending?

14:35:07 9 A. Yes.

14:35:08 10 Q. And what was that based on?

14:35:10 11 A. Facebook had an incredible ability to know everything  
14:35:15 12 about everyone.

14:35:16 13 MS. ANDERSON: Objection, Your Honor: move to strike;  
14:35:18 14 foundation.

14:35:18 15 MR. STONE: Let me ask it this way.

14:35:19 16 THE COURT: Sustained. The jury will disregard the  
14:35:21 17 witness's last comment.

14:35:23 18 Now ask your question, Mr. Stone.

14:35:25 19 Q. (BY MR. STONE) Mr. Katis, did you tell Facebook about your  
14:35:27 20 pending applications in connection with your 2012 meetings with  
14:35:31 21 them?

14:35:31 22 A. Yes.

14:35:33 23 MR. STONE: Thank you, Your Honor. No further  
14:35:35 24 questions.

14:35:36 25 THE COURT: Recross?

14:35:37 1 MS. ANDERSON: No further questions, Your Honor.

14:35:39 2 THE COURT: You may step down.

14:35:40 3 THE WITNESS: Thank you.

14:35:41 4 MR. STONE: Your Honor, we call Mr. Ranney. He's not  
14:35:44 5 inside the courtroom, so I'll just need a break to go get him.

14:35:47 6 THE COURT: You may get him.

14:35:48 7 (Witness sworn)

14:37:16 8 **MATTHEW RANNEY,**

14:37:16 9 having been first duly sworn, testified as follows:

14:37:16 10 **DIRECT EXAMINATION**

14:37:16 11 **BY MR. STONE:**

14:37:16 12 Q. Good afternoon, sir.

14:37:19 13 A. Good afternoon.

14:37:20 14 Q. And could you please introduce yourself to the jury and  
14:37:23 15 Court.

14:37:25 16 A. My name is Matthew Ranney.

14:37:27 17 Q. And where do you currently live?

14:37:29 18 A. In Pittsburgh, Pennsylvania.

14:37:31 19 Q. And if we could go back a few years and acquaint the jury  
14:37:35 20 with how we got here, where did you go to college?

14:37:37 21 A. I went to Calvin University in Grand Rapids, Michigan.

14:37:42 22 Q. What did you study there?

14:37:43 23 A. Computer science.

14:37:44 24 Q. And did you receive a degree.

14:37:45 25 A. Yes. A bachelor of science and computer science in 1994.

14:37:48 1 Q. What kind of work did you do after college?

14:37:51 2 A. I worked on various networking projects.

14:37:54 3 Q. And when you say "networking," can you describe for the  
14:37:58 4 jury what you mean.

14:37:59 5 A. Sure. So you know how there are mobile phones and there  
14:38:03 6 are computers and with them you interact with systems and  
14:38:07 7 services like TikTok or Twitter, and on the other end of those  
14:38:12 8 services are other users on their mobile phones and computers.  
14:38:16 9 Well, if you take all those devices and services together, we  
14:38:19 10 call that "the network."

14:38:20 11 Q. And are you aware of any drawings that would describe such  
14:38:23 12 a network?

14:38:24 13 A. Yes. In figure 1 of our patents.

14:38:27 14 MR. STONE: And if we could please pull up admitted  
14:38:30 15 Exhibit 3.

14:38:32 16 Q. And, Mr. Ranney, do you recognize what we've put on the  
14:38:35 17 screen here?

14:38:36 18 A. Yes. This is -- this is figure 1.

14:38:39 19 Q. And this is from which patent?

14:38:41 20 A. This is from the '270 patent.

14:38:43 21 Q. And what does this figure describe?

14:38:46 22 A. This describes a network like I had just mentioned.

14:38:52 23 Around the outside you can see the phones and the computers.

14:38:57 24 Those are the clients in the network. And in the middle you  
14:39:00 25 can see the -- the servers, which is what we call, like, the

14:39:04 1 back end or the infrastructure of the network.

14:39:09 2 Q. And the work you did after college focused on what part of  
14:39:12 3 the network?

14:39:13 4 A. So I spent most of my time working on the servers or the  
14:39:16 5 back end of the network rather than the clients, although the  
14:39:20 6 work is often interrelated. For example, one of the jobs I had  
14:39:24 7 was for an Internet service provider in Silicon Valley doing  
14:39:29 8 global Internet routing.

14:39:31 9 Q. Now, when did you begin working for Voxer?

14:39:34 10 A. In 2007.

14:39:35 11 Q. And what was your title?

14:39:37 12 A. I was cofounder and chief technology officer.

14:39:40 13 Q. And what were your responsibilities as chief technology  
14:39:44 14 officer?

14:39:44 15 A. I was the main person figuring out how the technology  
14:39:49 16 would work, how to actually get it built and, like, what kind  
14:39:54 17 of devices it could run on, given the -- the state of  
14:39:58 18 technology back then.

14:39:59 19 Q. Had you worked with Mr. Katis before you joined Voxer?

14:40:03 20 A. Yes. I first met Mr. Katis while working with him at  
14:40:08 21 Triple Canopy, which is a defense -- or a government  
14:40:13 22 contracting firm providing security services. A mutual friend  
14:40:18 23 introduced us, and Tom was looking for someone with a  
14:40:21 24 networking background.

14:40:22 25 Q. And what did you do at Triple Canopy?

14:40:25 1 A. So I was brought in to bring modern office IT  
14:40:30 2 infrastructure to the Triple Canopy sites in Iraq. So there  
14:40:36 3 was a -- there was a war going on there at the time, and so  
14:40:40 4 they didn't have things like computers and printers and phones.  
14:40:45 5 And so I worked to bring -- to bring those things to those  
14:40:48 6 sites, and we connected them up with satellite Internet, which  
14:40:53 7 didn't work very well.

14:40:54 8 Q. Now, when did you first begin -- when did you first begin  
14:40:58 9 discussing the ideas behind what ultimately became Voxer with  
14:41:02 10 Mr. Katis?

14:41:03 11 A. So Voxer officially started in 2007, but I was -- was  
14:41:10 12 talking about these ideas with Tom Katis during our time  
14:41:15 13 working together as Triple Canopy.

14:41:16 14 Q. And what do you recall about that?

14:41:18 15 A. So Tom related these.

14:41:23 16 MR. PAIGE: Objection, Your Honor: This is hearsay.

14:41:25 17 THE COURT: Overruled.

14:41:28 18 THE WITNESS: Should I proceed?

14:41:30 19 Q. (BY MR. STONE) Please.

14:41:30 20 A. Tom related how he had encountered some --

14:41:33 21 THE COURT: Now it's sustained. When he was saying  
14:41:37 22 what Mr. Katis had done, it was not hearsay. When he says what  
14:41:40 23 Mr. Katis said, it is hearsay.

14:41:42 24 MR. STONE: Thank you, Your Honor.

14:41:43 25 Q. So what is it that Mr. Katis had done that you understood?

14:41:48 1 A. Yes. He had run into some problems working with military  
14:41:55 2 radios in Afghanistan. Military radios are fancy  
14:41:59 3 walkie-talkies, and the problem is that you can only be on one  
14:42:06 4 channel at a time. So if you are working with two different  
14:42:09 5 teams on different channels and someone sends you a message  
14:42:15 6 from -- you know, the other team on the channel you're not on,  
14:42:19 7 you would miss that message. So, you know, we were just  
14:42:22 8 talking about those limitations.

14:42:24 9 Q. And did you have ideas for overcoming those limitations?

14:42:28 10 A. Yes. Yeah. We talked about ways to -- to improve the  
14:42:34 11 system, you know, ways to add -- to add buffering and  
14:42:39 12 conversation management to -- you know, to a military radio  
14:42:47 13 link.

14:42:47 14 Q. And were military radios the only applications you were  
14:42:51 15 considering?

14:42:51 16 A. No. We -- we quickly realized that this technology had  
14:42:55 17 application well beyond military radios, so we broadened the  
14:43:00 18 idea.

14:43:01 19 Q. And what were the characteristics of this new, better  
14:43:03 20 communication system you wanted to build?

14:43:06 21 A. Well, we knew we wanted it to be live like a phone call,  
14:43:12 22 but also time-shifted like e-mail. And we knew users needed to  
14:43:20 23 be able to manage multiple conversations, so we call that a  
14:43:24 24 multiple conversation management system. And we knew it needed  
14:43:29 25 to support all media types, so voice, video, text, images.

14:43:35 1 Q. And let's break that down a little bit. When you say live  
14:43:39 2 and time-shifted, what do you mean by that?

14:43:42 3 A. Oh so live means -- it means like what you think, like  
14:43:50 4 real time or as real time as the network will allow. And  
14:43:54 5 time-shifted means listen to at some time later because it was  
14:44:01 6 buffered or recorded.

14:44:02 7 Q. What was significant about the multiple conversation  
14:44:05 8 management system?

14:44:06 9 A. So in order to -- you know, to be able to solve that  
14:44:10 10 original problem, I mean, you need to be able to work with two  
14:44:15 11 different groups at the same time. If someone on one  
14:44:18 12 conversation or one channel, if you're communicating with them  
14:44:22 13 while someone on the other conversation or channel sends you  
14:44:25 14 something, you need to be able to hear that from the beginning  
14:44:28 15 without missing it.

14:44:29 16 Q. And why were you interested in all these various forms of  
14:44:33 17 communication media?

14:44:35 18 A. Well, we -- we knew we were building this kind of hybrid  
14:44:40 19 communications system, and we saw voice, video, and text as --  
14:44:46 20 as just very important components of this new hybrid system.

14:44:51 21 Q. Did you pursue the development of this system that had  
14:44:55 22 these characteristics?

14:44:56 23 A. We did.

14:44:57 24 Q. What did you call this hybrid system?

14:44:59 25 A. We called it "store and stream" or "live messaging."

14:45:02 1 Q. What were you trying to convey with those names?

14:45:05 2 A. We were trying to describe this new hybrid communication  
14:45:10 3 system that we were building.

14:45:11 4 Q. And, to your knowledge, did such a hybrid exist at the  
14:45:14 5 time you started to build your system?

14:45:15 6 A. Based on the research we did and the patents we were  
14:45:20 7 granted, no.

14:45:21 8 Q. Now, what steps did you take to build live messaging  
14:45:24 9 technology at Voxer?

14:45:25 10 A. Well, several. We started a company. I joined Tom at the  
14:45:31 11 this new company. We called it CommoTEK. And we started -- we  
14:45:36 12 started researching the different ways, you know, the idea,  
14:45:42 13 trying to get the idea into a form that we could develop. And  
14:45:47 14 when we had the idea that made sense, we started to build the  
14:45:52 15 team, and then we went to get patent protection.

14:45:59 16 Q. Did you have a number of brainstorming sessions with the  
14:46:02 17 group?

14:46:02 18 A. Certainly.

14:46:04 19 MR. PAIGE: Objection, Your Honor: leading.

14:46:06 20 THE COURT: Overruled.

14:46:09 21 Proceed.

14:46:10 22 A. The research that I mentioned was largely conducted  
14:46:14 23 through brainstorming sessions.

14:46:17 24 Q. And what was your role in connection with those  
14:46:19 25 brainstorming sessions?



14:46:20 1 A. So my background in networking, particularly, you know,  
14:46:27 2 for back-end systems, I knew about the different kinds of  
14:46:33 3 systems that existed, the way -- the way those systems use the  
14:46:37 4 network. And, you know, Tom knew about the challenges with --  
14:46:42 5 with military radios. And so kind of together with those  
14:46:45 6 two -- with our two backgrounds, we worked out an idea that  
14:46:50 7 made sense.

14:46:50 8 Q. Let's pull up Exhibit P-827. And, Mr. Ranney, do you  
14:46:58 9 recognize this?

14:46:58 10 A. Yes. This is an example of one of those brainstorming  
14:47:03 11 sessions in Tom's apartment.

14:47:04 12 Q. And who is pictured in the photograph?

14:47:07 13 A. That's me on the left, and on the right is Jim Panttaja,  
14:47:12 14 one of our earlier engineering hires.

14:47:15 15 Q. And where was this picture taken?

14:47:16 16 A. In Tom's apartment.

14:47:18 17 Q. Now, were there other members of the team besides yourself  
14:47:22 18 and Mr. Panttaja and Mr. Katis?

14:47:25 19 A. Yes. On the early team was also Jim's wife Mary Panttaja  
14:47:30 20 and Jim Rose.

14:47:31 21 Q. And what role did the Panttajas play?

14:47:34 22 A. They were -- they were husband and wife engineers. The  
14:47:41 23 Panttajas, Tom and I, are named inventors on many of our  
14:47:45 24 patents.

14:47:45 25 Q. What were the Panttajas' backgrounds?

14:47:48 1 A. Jim's background was in running engineering teams, and  
14:47:52 2 Mary's background was in shipping products and user experience.  
14:47:57 3 Q. And I believe you also mentioned Jim Rose. Who was  
14:48:00 4 Mr. Rose?  
14:48:01 5 A. He was Voxer's first patent counsel.  
14:48:03 6 Q. What did he do?  
14:48:05 7 A. He helped us understand the patent landscape and helped us  
14:48:11 8 file for our patents.  
14:48:13 9 Q. And why was it important to you that Voxer obtain patent  
14:48:17 10 protection?  
14:48:18 11 A. Well, we knew that the industry that we were moving into,  
14:48:22 12 telecommunications, has a lot of strong existing patent  
14:48:26 13 portfolios, and we needed to coexist with that. And we also  
14:48:31 14 knew that the system that we were building was -- was unique,  
14:48:35 15 and we wanted to protect it.  
14:48:38 16 Q. What was first thing that you did as part of efforts to  
14:48:41 17 get patent protection?  
14:48:43 18 A. So we did a prior art search.  
14:48:46 19 Q. And when you say "prior art," what are you referring to?  
14:48:49 20 A. So prior art is like things that already exist in the  
14:48:53 21 marketplace, things that have already been invented.  
14:48:56 22 Q. And after investigating prior art, did Mr. Rose do  
14:49:00 23 anything else?  
14:49:01 24 A. Yes. He helped us get the ideas that were out of our  
14:49:07 25 heads and into patent language so that we could file our

14:49:12 1 patents.

14:49:13 2 Q. When did Voxer release its first products?

14:49:17 3 A. So we -- we worked for some time since founding the  
14:49:21 4 company building what you might call prototypes or beta  
14:49:26 5 versions. But the first -- the first versions that we released  
14:49:30 6 were in 2011. And after we released the iOS and the Android  
14:49:37 7 version, that's when the -- you know, the product went viral.

14:49:40 8 Q. And have you prepared a timeline that shows some of the  
14:49:44 9 dates?

14:49:44 10 A. I have.

14:49:45 11 Q. And if we could pull that up, please. And, Mr. Ranney,  
14:49:55 12 what does this timeline show?

14:49:57 13 A. Well, you can see on May 2011, that's when the Voxer app  
14:50:02 14 for iOS was released. iOS is what Apple calls their operating  
14:50:09 15 system, so that just means iPhone. And in November 2011 is  
14:50:13 16 when the Android version was released.

14:50:16 17 Q. And was that the first version of the Voxer app for  
14:50:20 18 Android?

14:50:20 19 A. It was.

14:50:21 20 Q. And why did it take longer for the Voxer app for Android  
14:50:25 21 to come out versus for iOS?

14:50:28 22 A. Yeah. So, unlike developing for iOS, there is -- there's  
14:50:34 23 one company that makes iOS, which is Apple. There are many  
14:50:41 24 companies that make Android devices, and they make lots of  
14:50:45 25 different kinds of them, there are different flavors of

14:50:48 1 Android. So it took us a lot longer to get a version of Voxer  
14:50:52 2 for Android that worked well enough on enough devices that we  
14:50:55 3 could release it.

14:50:56 4 Q. And why did it take longer after -- or several years after  
14:51:00 5 Voxer's founding before you released your first commercial  
14:51:03 6 apps?

14:51:04 7 A. Sure. So if you -- if you think back to, you know, March  
14:51:10 8 of 2007 when the company was founded, or even, you know, June  
14:51:14 9 when the first provisional was filed, the world of mobile  
14:51:19 10 phones was very, very different back then. Like there was no  
14:51:22 11 iPhone, there was no Android. You know, people were using  
14:51:27 12 Nokias and Blackberries if they had -- you know, if they had a  
14:51:32 13 nice phone.

14:51:32 14 So it was not clear that iPhone or Android would  
14:51:39 15 actually win, so we had initially targeted some other hardware  
14:51:44 16 platforms. But, eventually, after -- after it became clear  
14:51:47 17 that iPhone and Android were going to be the dominant platforms  
14:51:52 18 for mobile phones, we put our energy there.

14:51:54 19 Q. And did working with those devices pose any unique  
14:51:56 20 challenges?

14:52:01 21 A. Yes. So we had a couple of problems. First of all, we  
14:52:05 22 thought that we could make one version of the app that would  
14:52:07 23 work on both Android and iPhone, and that turned out not to  
14:52:11 24 work very well. So we had to go back and do a native version  
14:52:16 25 for both iPhone and native version for Android. And a big

14:52:22 1 reason to do that was it was the only way to get access to the  
14:52:25 2 live audio components we needed for our live messaging.

14:52:30 3 Q. Now, what specific work were you doing at this time?

14:52:32 4 A. So I was working on the back end. I -- I wrote the first  
14:52:37 5 couple of versions of the back-end computer code, you know, for  
14:52:43 6 the server that saves the incoming media as it arrives and  
14:52:47 7 makes it available for the clients whenever they want it.

14:52:51 8 Q. And when you say "back end," can you explain what you  
14:52:54 9 meant by that?

14:52:54 10 A. Yeah. The servers that are on -- you know, in the network  
14:52:59 11 diagram, the things in the middle, the servers relay all of  
14:53:05 12 the -- all of the media between the -- between the clients. So  
14:53:10 13 it -- you know, it had to be -- it had to be very fast because  
14:53:14 14 it had to support millions of users at a time. And, yeah, so  
14:53:19 15 that's why I focused there.

14:53:21 16 Q. Was scalability a factor that you considered?

14:53:24 17 A. Certainly. Scalability was incredibly important because  
14:53:30 18 if we needed to be able -- like scalability is the ability to  
14:53:35 19 easily expand a network system to support more load. It was  
14:53:43 20 very important that we'd be able to easily expand our system as  
14:53:48 21 new users came on as opposed to having to take it down and  
14:53:50 22 rewrite it and then bring it back up again and then allow more  
14:53:54 23 users on. So, yeah, it was very important to have a scalable  
14:53:58 24 system.

14:53:58 25 Q. Was the Voxer network system scalable?

14:54:01 1 A. Indeed, it was. It went from very few users to millions  
14:54:07 2 of users in a very short time, and we did that without  
14:54:11 3 rewriting it. We just added -- added more computers.

14:54:15 4 Q. And when you say a short time, what time period are you  
14:54:19 5 talking about?

14:54:19 6 A. Over a period of months.

14:54:22 7 Q. Now, what forms of communication did the 2011 Voxer app  
14:54:27 8 work with?

14:54:28 9 A. It supported voice, text, and photos, and the voice could  
14:54:34 10 be live or time-shifted.

14:54:35 11 Q. And did that Voxer app allow video?

14:54:38 12 A. It didn't. But the back end, I wrote that from the  
14:54:43 13 beginning to support video or any media type.

14:54:47 14 Q. And why didn't it support video?

14:54:50 15 A. So -- so, again, if you look at that timeline and you  
14:54:54 16 think about the kinds of iPhones and Androids that came out  
14:55:00 17 around that time, they were not very powerful. And, indeed,  
14:55:04 18 they were -- they were not powerful enough to support live  
14:55:08 19 video. And the -- the developer access, in particular, I mean,  
14:55:15 20 it was very hard as a developer to write a program that would  
14:55:21 21 make use of live video with those early devices. And also the  
14:55:25 22 bandwidth then was not what it is today.

14:55:27 23 Q. And what do you mean by bandwidth?

14:55:30 24 A. Bandwidth is a networking term. It means, like, how fast  
14:55:36 25 can your network go.

14:55:37 1 Q. And so what was significant about bandwidth?

14:55:40 2 A. So the -- the bandwidth available, like the speed of the  
14:55:43 3 networks in 2011 compared to now, the networks were really  
14:55:51 4 slow, like, really slow. They could barely support live voice  
14:55:55 5 over those data networks. They certainly couldn't support live  
14:55:59 6 video.

14:56:00 7 Q. Now, we've heard Voxer referred to as walkie-talkie app.  
14:56:03 8 Was there a reason for that?

14:56:05 9 A. Yeah. That was a name that resonated with our users, but  
14:56:11 10 we always offered more than that. You know, it was always more  
14:56:14 11 than a walkie-talkie or cellular PTT.

14:56:17 12 Q. And you just mentioned cellular PTT. What do you mean by  
14:56:22 13 that?

14:56:22 14 A. Yeah. So PTT is push-to-talk. And so cellular PTT  
14:56:28 15 systems, like Nextel is a popular one, they work like  
14:56:33 16 walkie-talkies, only they happen to use the cellular network.  
14:56:37 17 So you push the button on your phone, Your voice comes out the  
14:56:42 18 speaker of another phone. And so walkie-talkie over cellular.

14:56:46 19 Q. And why wasn't Voxer like that?

14:56:47 20 A. Well, because in a walkie-talkie you could miss a message,  
14:56:51 21 and in Voxer you could always play a message again. You can be  
14:56:55 22 on more than one channel at a time. You can have more than one  
14:56:59 23 conversation going on at a time with Voxer. And there are  
14:57:04 24 multiple media types, so you could have voice, photos, and  
14:57:08 25 texts.

14:57:08 1 Q. Let me show you now what's been admitted as plaintiff's  
14:57:11 2 Exhibit P-5. Mr. Ranney, do you recognize this?

14:57:17 3 A. Yes. This is our first provisional patent application.

14:57:21 4 Q. And when was that filed?

14:57:23 5 A. You can see on the time stamp there that is June of 2007.

14:57:27 6 Q. And what did you intend that to cover?

14:57:30 7 A. We intended this to cover the full scope of the invention,  
14:57:37 8 of our -- of our live messaging with all of the -- all of the  
14:57:43 9 media types we could think of.

14:57:44 10 Q. And is that described in the provisional?

14:57:47 11 A. It is.

14:57:47 12 Q. And if we could direct your attention, please, to page  
14:57:50 13 P5-4, and what are you describing here, sir.

14:57:55 14 A. Sure. So this -- this talks about -- you know, this is,  
14:58:00 15 you know, more details of the system here. And Point Number 1  
14:58:08 16 talks about the multiple conversation management system, right?  
14:58:12 17 And then Points 2 and 3 are the store and stream, you know,  
14:58:18 18 that we talked about before. So you can -- you can manage  
14:58:22 19 multiple conversations. You can -- you can interact with them  
14:58:27 20 in either a live or time-shifted mode.

14:58:29 21 Q. Now, was there another provisional patent application?

14:58:32 22 A. There was.

14:58:33 23 MR. STONE: And if we could please pull up admitted  
14:58:35 24 Exhibit P-6.

14:58:40 25 Q. Mr. Ranney, do you recognize this?



14:58:41 1 A. Yes. This is our second provisional application.

14:58:45 2 Q. And when was this filed?

14:58:47 3 A. In October of 2007.

14:58:49 4 Q. And are the Panttajas also named inventors on this  
14:58:53 5 document?

14:58:53 6 A. They are, along with myself and Tom Katis.

14:58:57 7 Q. Now, what did you intend to cover with the second  
14:59:01 8 provisional?

14:59:03 9 A. This goes into more detail about -- about the system, and  
14:59:08 10 it talks about the -- the use cases and target markets.

14:59:13 11 Q. And if we could turn, please, to page 610.

14:59:20 12 And what are you describing here in Point Number 1  
14:59:25 13 under to RebelVox system?

14:59:28 14 A. Right. And RebelVox is also another name for the company.

14:59:33 15 The conversation management system that works in the  
14:59:37 16 audio, video, voice or other media. That's the multiple  
14:59:43 17 conversation management system that I mentioned before.

14:59:45 18 Q. And there's a reference to TiVo. What's the reference to  
14:59:50 19 that?

14:59:50 20 A. So TiVo is what -- like, if you don't remember, it's what  
14:59:54 21 we now think of as digital video recorder or DVR. It's an  
15:00:00 22 example of an early time-shifting system, a reference we were  
15:00:06 23 using just to help people understand what we are talking about.  
15:00:10 24 So TiVo is a -- it's a device you put in your -- you know, on  
15:00:15 25 your live TV feed. You have live TV on one side, you have TiVo

15:00:19 1 on the other side, and you can do a little bit of time-shifted  
15:00:22 2 TV consumption. But it's a one-way device, and there's no  
15:00:28 3 interactivity with it. And it's a single device by itself on  
15:00:31 4 your -- on your home. But it was just to help people  
15:00:35 5 understand what time-shifting meant.

15:00:36 6 Q. And also trying to -- you were trying to describe that it  
15:00:40 7 could also have application to recording of live, two-way  
15:00:44 8 communications?

15:00:45 9 A. That's -- I mean, TiVo does not allow two-way  
15:00:49 10 communications, but the multiple conversation management system  
15:00:53 11 certainly does.

15:00:54 12 Q. And so if we could now direct your attention to the page  
15:00:58 13 bearing 6-13 -- Exhibit 6-13.

15:01:02 14 And what are you describing here, sir?

15:01:04 15 A. These are some of the target markets that -- you know,  
15:01:10 16 where this technology could be useful: business communications,  
15:01:14 17 social networks, media industries like broadcasting.

15:01:17 18 Q. And what were you envisioning at the time in the  
15:01:21 19 broadcasting context?

15:01:23 20 A. Well, if you think about a live message, there could be a  
15:01:27 21 live video, and maybe it's a really long message. But also  
15:01:34 22 that, you know, users could interact with it in a time-shifted  
15:01:38 23 or live mode, but also be able to send things back the other  
15:01:42 24 direction. It could be an interactive video experience.

15:01:45 25 Q. And what did you envision in the context of public and

15:01:49 1 social networks?

15:01:50 2 A. So social network is generally a series of conversations  
15:01:59 3 that people interact with, and there are multiple media types  
15:02:02 4 in those conversations, in those conversations threads. And,  
15:02:08 5 you know, we can apply this technology to -- to that, you know,  
15:02:13 6 multiple conversation system and add our multiple media types,  
15:02:18 7 time-shifted or live, to that.

15:02:21 8 MR. STONE: Your Honor, I'm not sure when you're  
15:02:23 9 going take an afternoon break.

15:02:23 10 THE COURT: We're going to take an afternoon break in  
15:02:26 11 a little bit, but not quite now.

15:02:27 12 MR. STONE: Okay.

15:02:28 13 Q. Mr. Ranney, is the concept of the multiple conversation  
15:02:32 14 management system reflected in your patent?

15:02:34 15 A. Yes.

15:02:35 16 Q. And are you a named inventor on any Voxer patents?

15:02:38 17 A. Yes. I am a named inventor on over 150 Voxer patents  
15:02:42 18 related to live messaging.

15:02:44 19 Q. And are you familiar with the patents being asserted in  
15:02:47 20 this case?

15:02:48 21 A. Yes.

15:02:48 22 Q. Which ones are they?

15:02:49 23 A. The '270 patent and the '557 patent.

15:02:53 24 Q. And are those patents related to the provisional we just  
15:02:57 25 discussed?

15:02:58 1 A. Yes. They build on the provisional.

15:03:00 2 MR. STONE: And let's pull up Plaintiff's P-3.

15:03:03 3 Q. Mr. Ranney, do you recognize this?

15:03:06 4 A. Yes. This is the '270 patent.

15:03:09 5 Q. Are you a named inventor?

15:03:10 6 A. I am, along with Tom Katis, Jim Panttaja and

15:03:14 7 Mary Panttaja.

15:03:14 8 Q. And do you understand what claims of the '270 patent Voxer

15:03:17 9 is asserting here today?

15:03:19 10 A. There are four of them. I forget the numbers.

15:03:22 11 Q. Is this the patent that we were looking at earlier that

15:03:25 12 contained figure 1?

15:03:26 13 A. Yes.

15:03:27 14 Q. And is that on sheet 1 of 33 of this patent?

15:03:30 15 A. I believe so, yes. Yes. There it is.

15:03:32 16 Q. Now, did you assist in preparing the figures that are

15:03:36 17 found in the patent?

15:03:37 18 A. Yes.

15:03:38 19 Q. And what about the specification of the patent? Did you

15:03:43 20 assist in preparing that?

15:03:44 21 A. I -- I did, along with the other inventors and our patent

15:03:49 22 counsel.

15:03:52 23 Q. Now, let me direct your attention to P-3, 43 at column 4,

15:03:57 24 please. And what's described there, sir?

15:04:00 25 A. This is the summary of the invention.

15:04:03 1 Q. And what were you trying to describe?

15:04:06 2 A. A, you know, multiple conversation management using --

15:04:12 3 using multiple media types with, you know, live or time-shifted

15:04:18 4 interaction models.

15:04:19 5 Q. Live messaging?

15:04:21 6 A. Live messaging.

15:04:22 7 Q. Now, let's turn to column 8 of the '270 patent at P-3, 45.

15:04:28 8 Do you recognize this?

15:04:30 9 A. Yes. This is part of the specification.

15:04:34 10 Q. And is the multiple conversation management system

15:04:36 11 defined?

15:04:37 12 A. It is.

15:04:39 13 Q. And how is that defined?

15:04:41 14 A. Yes. So reading from the text here, it is "An application

15:04:46 15 that runs as part of a client application which enables a user

15:04:50 16 to engage in multiple conversations using a variety of media

15:04:54 17 types."

15:04:55 18 Q. And is "media" defined?

15:04:57 19 A. It is.

15:04:58 20 Q. And how is that defined?

15:05:00 21 A. It says reading -- sorry -- audio, video, text position,

15:05:06 22 and other -- you know, other data types.

15:05:09 23 Q. So audio and video?

15:05:11 24 A. Audio and video and texts are the main ones, but we

15:05:15 25 imagined using it for other things as well.

15:05:18 1 Q. And are "conversations" defined?

15:05:20 2 A. They are.

15:05:20 3 Q. And how are they defined?

15:05:22 4 A. As a thread of messages, you know, that you can engage in  
15:05:26 5 a real-time or time-shifted mode.

15:05:29 6 Q. Now, is there another patent being asserted in this case?

15:05:32 7 A. There is. The '557 patent.

15:05:34 8 MR. STONE: And if we could please pull that up,  
15:05:36 9 please, Mike.

15:05:38 10 Q. Mr. Ranney, do you recognize this?

15:05:40 11 A. Yes. This is the '557 patent.

15:05:43 12 Q. And are you a named inventor on this patent as well?

15:05:46 13 A. I am, along with Tom Katis, Jim Panttaja and  
15:05:49 14 Mary Panttaja.

15:05:50 15 Q. And do you have an understanding as to what claims are  
15:05:54 16 being asserted?

15:05:55 17 A. Yes. Claims 1 and 9.

15:05:57 18 Q. Now, is the multiple conversation management system  
15:06:00 19 reflected in this patent as well?

15:06:02 20 A. It is.

15:06:04 21 Q. And if we could turn to page P-4, 45, do you recognize  
15:06:11 22 that?

15:06:11 23 A. Yes. This is the -- the same definition from the '270  
15:06:16 24 patent.

15:06:17 25 Q. And does this patent also contain a similar summary of

15:06:21 1 invention?

15:06:21 2 A. It does. The patents share a common spec.

15:06:24 3 Q. Now, Mr. Ranney, did there ever come a time when you came  
15:06:28 4 to discuss your technology and patents with Facebook?

15:06:32 5 A. Yes. There were two times that I can recall, but others  
15:06:39 6 at Voxer, especially Tom Katis, met with them more frequently.

15:06:44 7 Q. And does your timeline reflect the meetings that you  
15:06:48 8 attended?

15:06:48 9 A. It does.

15:06:51 10 Q. When was the first meeting you attended?

15:06:54 11 A. So the first one is there on August 17 of 2010.

15:06:57 12 Q. And who attended that meeting?

15:06:59 13 A. From Voxer, it was me, Tom Katis, and Gustaf Alstromer.  
15:07:06 14 And from Facebook it was Chamath Palihapitiya, who is VP of  
15:07:14 15 growth, and Matt Papakipos, who was engineering director at  
15:07:18 16 Facebook.

15:07:18 17 Q. Now, without going into who said what about the meeting,  
15:07:22 18 what do you recall about the meeting?

15:07:24 19 A. So it was a very preliminary meeting. We -- Tom and I did  
15:07:29 20 what we always do at those meetings, which is he talks about,  
15:07:35 21 you know, the origin story, you know, Afghanistan, and then he  
15:07:40 22 discusses the patent strategy. And at the time we had only  
15:07:46 23 patent applications. They weren't granted yet, but we  
15:07:50 24 discussed those.

15:07:51 25 And then my role was I got into explaining the

15:07:57 1 technology. So I would usually draw a diagram on the white  
15:08:01 2 board and explain how technology works.

15:08:03 3 Q. And did you provide a demo at this meeting?

15:08:06 4 A. We did, yep.

15:08:07 5 Q. And what did the demo entail?

15:08:10 6 A. We demonstrated live messaging between a few devices that  
15:08:15 7 we brought.

15:08:16 8 Q. And do you recall anything about the reaction that the  
15:08:19 9 Facebook attendees had to that demo?

15:08:22 10 A. Yeah. Their VP definitely gave us a hard time about the  
15:08:27 11 clunky new user experience. But once we got -- you know, once  
15:08:31 12 the devices were signed in, the live messaging part worked  
15:08:37 13 perfectly.

15:08:37 14 MR. STONE: And if we would please pull up admitted  
15:08:40 15 Exhibit P-752.

15:08:43 16 Q. Mr. Ranney, do you recognize this?

15:08:45 17 A. Yes. This is a Voxer internal e-mail summarizing the  
15:08:54 18 meeting that I just talked about.

15:08:56 19 Q. And is the e-mail consistent with your recollection of  
15:08:59 20 that meeting?

15:08:59 21 A. It is.

15:09:00 22 Q. And did it -- do you recall that the Facebook VP mentioned  
15:09:07 23 that the technology was "so cool"?

15:09:10 24 A. Yes. That, and they were very interested in how we made  
15:09:16 25 it so fast.



15:09:17 1 Q. When did you next meet with Facebook?

15:09:22 2 A. So in 2011, when our -- when our app went viral, we  
15:09:31 3 started to get a lot of attention from a lot of different tech  
15:09:36 4 companies and Google and Facebook. And Tom had met with them a  
15:09:41 5 couple of times, and they requested that I come and do a more  
15:09:46 6 technical conversation.

15:09:48 7 Q. And when --

15:09:49 8 A. So yeah. It's on the timeline.

15:09:51 9 Q. I was just going to ask you if it's on your timeline.

15:09:54 10 When did that meeting take place?

15:09:56 11 A. Right. So you can see there are a few meetings up there.

15:10:01 12 The one that I attended was on March 6, 2012.

15:10:06 13 Q. And where did that meeting take place?

15:10:09 14 A. That was at Facebook in Menlo Park.

15:10:13 15 Q. And who was present from Voxer?

15:10:15 16 A. So, from Voxer, it was me and Tom Katis.

15:10:18 17 Q. And who was present from Facebook?

15:10:21 18 A. So the -- the two names that I remember are Chris Daniels  
15:10:27 19 an Peter Deng, but there were other engineers and product  
15:10:31 20 people whose names I don't recall.

15:10:33 21 Q. And what was your role at the meeting?

15:10:36 22 A. So it started -- you know, we started it the same way that  
15:10:41 23 we always did, like we did the previous one, and I answered a  
15:10:44 24 lot of technical questions, you know, focused on scalability in  
15:10:51 25 particular. They were very interested to hear whether the

15:10:55 1 architecture was scalable.

15:10:56 2 Q. Were there other technical questions that they had?

15:10:59 3 A. Yeah. They were -- they were interested, you know,  
15:11:05 4 whether we could support voice, whether we could support video,  
15:11:10 5 whether we could do it all at Facebook's scale.

15:11:13 6 Q. And what did you tell them about that?

15:11:15 7 A. So on the scale part, I mean, we had scaled it this far.  
15:11:21 8 I'm sure we could scale it quite a bit further. And on the --  
15:11:26 9 the voice part, yes, we support voice. On the video part, I  
15:11:30 10 told them, you know, what I said before, which is the back end  
15:11:35 11 already supports video, but the -- the phones, they don't -- we  
15:11:40 12 can't do live video on the mobile phones very well yet.

15:11:44 13 Q. Were there questions about the speed of Voxer's  
15:11:47 14 technology?

15:11:48 15 A. Yeah. Definitely. They were very impressed with how fast  
15:11:55 16 it was, and I -- I told them that was because of our store and  
15:11:58 17 stream technology, where we could -- you know, where a user  
15:12:02 18 could start sending a message, maybe even without a network  
15:12:06 19 connection, and then the receiver can listen to it whenever  
15:12:09 20 they want. And that makes the system seem very fast to both  
15:12:14 21 the sender and the receiver.

15:12:16 22 Q. Did you ever understand that Voxer -- or strike that.

15:12:19 23 Did you ever understand that Facebook was considering  
15:12:22 24 building a version of Voxer internally?

15:12:24 25 A. No.

15:12:25 1 Q. Now, how did you leave this meeting with Facebook?

15:12:31 2 A. Like how -- like what was the last thing that we said  
15:12:37 3 during the meeting?

15:12:38 4 Q. That you can recall.

15:12:39 5 A. Yeah. Let's see. What was the last thing? They were --  
15:12:45 6 yeah. They were -- we were interested in having them  
15:12:49 7 license -- license the technology. And, yeah, that was -- that  
15:12:54 8 was where we left it.

15:12:55 9 Q. And was Voxer excited about that prospect?

15:12:59 10 A. Yeah. That's what we were -- what we were trying to do.

15:13:03 11 Q. Now, when did you next hear about interactions with  
15:13:07 12 Facebook?

15:13:07 13 A. Well, shortly thereafter, I -- I learned that Facebook was  
15:13:11 14 not interested in licensing our technology.

15:13:14 15 Q. And what was your reaction to that?

15:13:16 16 A. I was surprised, because they seemed so interested and  
15:13:24 17 impressed with how well it worked.

15:13:26 18 Q. Now, as of March 2012, did Voxer allow for live voice  
15:13:33 19 messaging?

15:13:33 20 A. It did. Voice could be live or time-shifted.

15:13:36 21 Q. Did Facebook Messenger?

15:13:38 22 A. No.

15:13:39 23 Q. Now, what was your next interaction with Facebook?

15:13:42 24 A. Well, you know, late in 2012 we started to have some  
15:13:52 25 mysterious outages with our integration with Facebook.

15:13:56 1 Q. And what were those mysterious outages?

15:14:00 2 A. When we were -- when we were using the sign in with

15:14:03 3 Facebook functionality, and it often didn't work.

15:14:10 4 Q. And when you say "sign in with Facebook functionality"

15:14:13 5 what are you referring?

15:14:15 6 A. So you've probably seen how -- how in some apps that

15:14:18 7 aren't Facebook, there's a button that says "sign in with

15:14:23 8 Facebook." And we put that button in our app. Facebook

15:14:26 9 encouraged a lot of people to integrate with that, so we were

15:14:30 10 one of the app developers who did. And, you know, people like

15:14:36 11 it. It makes it easy for them. But a lot of times we found

15:14:39 12 that it didn't work.

15:14:41 13 MR. PAIGE: Objection, Your Honor: Motion in Limine

15:14:43 14 Number 3.

15:14:45 15 MR. STONE: I think that goes to something that

15:14:47 16 happened later, Your Honor.

15:14:49 17 THE COURT: Ladies and gentlemen, at this time we'll

15:14:52 18 take our afternoon recess. We'll be in recess for 15 minutes.

18:00:00 19 (Jury recessed)

15:15:30 20 THE COURT: All right. Please be seated.

15:15:42 21 Let me hear your objection.

15:15:45 22 MR. PAIGE: Your Honor, it sounds like they are

15:15:50 23 starting to talk about some sort of unfair competition or

15:15:53 24 something of that sort on the part of Facebook.

15:15:55 25 MR. STONE: Do you want the witness here for this,

15:15:58 1 Your Honor?

15:15:58 2 THE COURT: I don't care if the witness is here or  
15:16:00 3 not.

15:16:00 4 MR. STONE: So, Your Honor, during the fall of 2012,  
15:16:06 5 Voxer did experience some mysterious outages with respect to  
15:16:11 6 Facebook Connect. This is not when they got cut off from the  
15:16:15 7 Find Friends API in January of 2013, where Facebook said you're  
15:16:20 8 a competitor. This is just a situation where they experienced  
15:16:23 9 some mysterious outages in the lead-up in the fall of 2012.

15:16:27 10 So I'm not going to ask him, Did you get cut off from  
15:16:30 11 Facebook Find Friends? Did they cut you off from the API? I  
15:16:34 12 was actually almost at the end of this inquiry.

15:16:36 13 THE COURT: Then I'll let you finish this limited  
15:16:39 14 inquiry.

15:16:40 15 MR. STONE: Thank you, Your Honor.

15:16:40 16 THE COURT: All right. We'll be in recess until a  
15:16:42 17 little after 3:30.

15:16:44 18 MR. VAN NEST: Your Honor, excuse me. I think we're  
15:16:46 19 about to finish with Mr. Ranney here after the cross, and I  
15:16:49 20 think the next witness up is Dr. Mitzenmacher. And I have some  
15:16:55 21 issues I'd like to take up with the Court before he gets on the  
15:16:59 22 stand, and I can do it whenever the Court pleases, but I  
15:17:01 23 thought I'd alert the Court.

15:17:02 24 THE COURT: How long do you anticipate this cross  
15:17:05 25 being?

15:17:07 1 MR. PAIGE: Fifteen minutes or so, Your Honor.

15:17:11 2 THE COURT: All right. Then let me take up your  
15:17:13 3 issues right now.

15:17:15 4 MR. VAN NEST: Okay.

15:17:16 5 THE COURT: Please be seated.

15:17:20 6 MR. VAN NEST: Your Honor, Dr. Mitzenmacher, as you  
15:17:22 7 heard this morning, is their technical witness on infringement.  
15:17:27 8 And we learned in looking at the slides that he intends to  
15:17:37 9 express a position infringement that Voxer disclaimed in the  
15:17:39 10 IPR proceedings. We've always known that this has to do with  
15:17:43 11 the '557 patent, and Your Honor heard the openings this  
15:17:49 12 morning. The debate is whether selection and measurement is  
15:17:53 13 done by the servers or on the client. And we've always  
15:17:58 14 understood that Dr. Mitzenmacher was going to express the  
15:18:02 15 opinion that Facebook Live and Instagram Live did it on the  
15:18:06 16 servers and as part of the server system at Facebook.

15:18:12 17 We now learn, looking at the slides, that he intends  
15:18:15 18 to offer a second alternative opinion that, even if the client  
15:18:20 19 performs the measurement and the selection, that's  
15:18:25 20 infringement. Now, in the IPR in which Voxer and Facebook were  
15:18:35 21 engaged, they said in order to avoid prior art, the claimed  
15:18:39 22 video message infrastructure must actively participate in  
15:18:44 23 analyzing bandwidth and selecting video message bits and,  
15:18:48 24 further, that Claim 1 requires --

15:18:51 25 THE COURT: Well, let me interrupt you right here.

15:18:54 1 MR. VAN NEST: Yes, sir.

15:18:55 2 THE COURT: You say you discovered this by looking at  
15:18:58 3 the slides that --

15:18:58 4 Is it Dr. Mitzenmacher?

15:19:00 5 MR. VAN NEST: It is.

15:19:00 6 THE COURT: -- is going to testify from. He will not  
15:19:06 7 be allowed to testify as to anything that is not in his report  
15:19:09 8 that you had access to. So did he or did he not in his report  
15:19:15 9 address the points that you're telling me are in the slides?

15:19:19 10 MR. VAN NEST: He didn't address this point directly.  
15:19:22 11 He does have in his report an opinion that there is divided  
15:19:27 12 infringement, which is a little bit different.

15:19:30 13 In his report he says the mere fact that the client  
15:19:35 14 device is doing it doesn't constitutes divided infringement.  
15:19:41 15 But that's different from saying you can infringe if the  
15:19:47 16 Facebook has the client device doing the whole thing, both the  
15:19:50 17 measurement and the bandwidth. So it's quite different than  
15:19:53 18 what he had in his report, and it runs right in face of what  
15:19:57 19 they told the patent office Claim 1 required.

15:20:00 20 THE COURT: I'm not worried about that.

15:20:02 21 Counsel?

15:20:03 22 MR. STAKE: Your Honor, we strenuously disagree with  
15:20:05 23 this argument.

15:20:06 24 THE COURT: Let me ask you so we have the record  
15:20:07 25 right, there are a lot of lawyers, state your name so if this

15:20:11 1 finds its way to Washington, the Circuit will know who spoke at  
15:20:13 2 any given moment during the trial.

15:20:16 3 MR. STAKE: Sam Stake on behalf of Voxer, Your Honor.

15:20:18 4 THE COURT: All right. Now tell me.

15:20:20 5 MR. STAKE: We strenuously disagree on several  
15:20:22 6 counts. This argument has been waived. It's also baseless at  
15:20:27 7 the bottom. Contrary --

15:20:29 8 THE COURT: Well, waiving it and being baseless are  
15:20:32 9 two different things.

15:20:33 10 MR. STAKE: Agreed, Your Honor. And contrary to  
15:20:39 11 Mr. Van Nest's argument, Dr. Mitzenmacher fully disclosed these  
15:20:42 12 positions in his report last August of 2021.

15:20:45 13 THE COURT: I'm not talking about whether he fully  
15:20:47 14 described his position. Is it disclosed in the report that he  
15:20:53 15 will render an opinion on this subject?

15:20:57 16 MR. STAKE: Yes, Your Honor.

15:20:58 17 THE COURT: Mr. Van Nest?

15:21:00 18 MR. VAN NEST: Again, I disagree. There's two  
15:21:02 19 issues. One is he's got a divided infringement opinion, but  
15:21:07 20 divided infringement is not an issue in the case. He doesn't  
15:21:12 21 have the opinion in his report that, if the only activity on  
15:21:17 22 selection and bandwidth occurs in the client device, that's  
15:21:20 23 infringement. He doesn't have that in the report. He has a  
15:21:24 24 divided infringement opinion, but divided infringement is not  
15:21:28 25 an issue now.



15:21:29 1 THE COURT: So what conclusion do you intend to try  
15:21:35 2 to elicit from Dr. Mitzenmacher in this area that Mr. Van Nest  
15:21:40 3 is complaining about.

15:21:42 4 MR. STAKE: Your Honor, Dr. Mitzenmacher will opine  
15:21:44 5 that there is a selection performed by the client and that  
15:21:48 6 there is a selection performed by the server. And he has both  
15:21:52 7 of these theories. I could read directly from his report.

15:21:55 8 THE COURT: Please do.

15:21:57 9 MR. STAKE: Okay. The paragraph 616 and 621 of his  
15:22:02 10 report, this is where he's opined that Facebook servers will  
15:22:08 11 select the corresponding video segment data from among various  
15:22:12 12 transcoded versions of the video segment.

15:22:14 13 That's -- I believe that's a theory that's not  
15:22:17 14 disputed as disclosed. The second theory states, in  
15:22:20 15 particular --

15:22:20 16 MR. VAN NEST: Where are you reading, Counsel?

15:22:22 17 MR. STAKE: Oh. Paragraph 622. It states, in  
15:22:28 18 particular: Facebook controls and directs client devices to  
15:22:32 19 perform bandwidth estimation and then requests a particular  
15:22:36 20 bitrate version of a Facebook Live or Instagram Live stream to  
15:22:41 21 download. And that's the client's opinion, Your Honor.

15:22:44 22 MR. VAN NEST: Your Honor, that's what I'm saying is  
15:22:46 23 part of the divided infringement opinion which is no longer in  
15:22:50 24 the case. That's what I'm saying.

15:22:52 25 THE COURT: Well, wait a minute. You say it's no

15:22:54 1 longer in the case. If the plaintiffs intend to try to elicit  
15:22:59 2 that testimony, it sounds like they disagree that it's no  
15:23:05 3 longer in the case.

15:23:07 4 MR. STAKE: Your Honor, I would argue that this is  
15:23:07 5 fodder for cross-examination, if anything.

15:23:10 6 MR. VAN NEST: It --

15:23:11 7 THE COURT: No. You're -- you're jumping around.

15:23:18 8 Dr. Mitzenmacher disclosed this in his opinion.  
15:23:23 9 Mr. Van Nest, you-all have had his opinion. I'm not going to  
15:23:26 10 allow him to testify beyond his opinion or elaborate beyond his  
15:23:31 11 opinion, but I am going to allow him to testify as to what was  
15:23:34 12 in his opinion that was provided to you earlier. No more than  
15:23:40 13 that. Do you understand that, Counsel?

15:23:43 14 MR. STAKE: Thank you, Your Honor.

15:23:44 15 THE COURT: And make sure he understands where the  
15:23:46 16 fence comes around.

15:23:47 17 MR. VAN NEST: Your Honor, there are two other much  
15:23:49 18 shorter issues that are similar. But these --

15:23:53 19 THE COURT: I am always concerned when a lawyer uses  
15:23:57 20 the word "shorter." Now, I used to do that, too, but I've been  
15:24:01 21 on the bench a long time and I understood where I was wrong  
15:24:04 22 when I was on your side of the bench.

15:24:09 23 Take a shot at it.

15:24:11 24 MR. VAN NEST: Issue one, he has a series of exhibits  
15:24:14 25 with source code which he intends to display. He never

15:24:20 1 identified that code specifically in his opinion as something  
15:24:23 2 he was relying on.

15:24:24 3 He did have an appendix with thousands of lines of  
15:24:28 4 code, but there's no discussion of these lines of codes  
15:24:32 5 supporting any particular opinion in his report. So that's  
15:24:36 6 issue one.

15:24:38 7 THE COURT: All right. Stop right there.

15:24:39 8 MR. STAKE: Your Honor, we disagree that he --  
15:24:43 9 Dr. Mitzenmacher has failed to disclose this code. He has  
15:24:47 10 provided the code file names in his expert report, and he's  
15:24:51 11 described the functions in that code. He hasn't copied all the  
15:24:55 12 code, but they come from three very, very short file -- files  
15:24:59 13 that were requested by Voxer. One is one page, one was two  
15:25:02 14 pages, and one was four pages. He didn't copy all of that code  
15:25:06 15 into his report, but he'll be pulling a small snippet of each  
15:25:11 16 of those small files and displaying those into a demonstrative.

15:25:18 17 Now, I think it's notable that the functions he  
15:25:21 18 describes there, it's not disputed is my understanding that  
15:25:25 19 he's described those functions accurately. This is Facebook  
15:25:29 20 code.

15:25:29 21 MR. VAN NEST: But he never -- he never in the report  
15:25:32 22 discloses as to those functions or any others that this  
15:25:35 23 particular code is what he's relying on. That's my -- he's  
15:25:39 24 trying to dress up this opinion as something better than it is  
15:25:43 25 by now attaching source code to it, which he never did in the

15:25:47 1 report.

15:25:47 2 THE COURT: You will be allowed to thoroughly  
15:25:49 3 cross-examine on whether he provided you with that information  
15:25:52 4 ahead of time, but I'm going to allow him to testify as to what  
15:25:56 5 he relied on.

15:25:57 6 Now, something I need to bring up since you-all  
15:26:01 7 didn't start out in my court. You came down the road from  
15:26:07 8 Waco, and I want to make sure because I didn't take this up  
15:26:10 9 sooner and I don't think that I understood this was happening  
15:26:14 10 before. Some judges, and I believe my colleague in Waco is  
15:26:18 11 one, allows demonstrative exhibits to go to the jury room. In  
15:26:22 12 my court demonstrative exhibits do not go to the jury room.

15:26:26 13 So, if he's using this as demonstrative, you may  
15:26:29 14 cross-examine him on it, but it's not to be considered as  
15:26:32 15 evidence and it will not go to the jury room.

15:26:34 16 MR. VAN NEST: Fine, Your Honor.

15:26:37 17 THE COURT: Try number three on me.

15:26:39 18 MR. STAKE: Your Honor, on that note we've come to  
15:26:42 19 appreciate Your Honor's procedures. And in this vein we do  
15:26:45 20 have three exhibits that we understand are not objected to on  
15:26:50 21 their admission. Would Your Honor be amenable to those being  
15:26:54 22 admitted now, perhaps, or how would Your Honor like to do that?

15:26:57 23 THE COURT: Whatever is easiest, but I want to finish  
15:26:59 24 with Mr. Van Nest. He says he's got one left that we're all  
15:27:05 25 hopeful is shorter than even the last one. But he was honest

15:27:09 1 about that one. That was not long. So give me the third one,  
15:27:12 2 and then we'll go to the exhibit situation.

15:27:14 3 MR. VAN NEST: He intends to make an argument about  
15:27:18 4 what Claim 1 of the '557 patent requires that he never made in  
15:27:26 5 his report. And I can take that on the fly if you wish,  
15:27:30 6 Your Honor, but he's making an argument about what the claim  
15:27:33 7 requires in Slide 84 of his deck that was never made in the  
15:27:39 8 report.

15:27:40 9 MR. STAKE: Your Honor, as I just explained, he has  
15:27:43 10 offered both of these opinions. He'll be bound by that. In  
15:27:46 11 fact, it's -- respectfully, it's an argument that will respond  
15:27:52 12 directly to Mr. Van Nest's opening argument, an argument that  
15:27:56 13 Mr. Van Nest made about claim language.

15:27:59 14 THE COURT: It doesn't matter what argument he made.  
15:28:02 15 When we're dealing with an expert, it is -- he doesn't get to  
15:28:05 16 go outside his report. No matter what Mr. Van Nest said in his  
15:28:10 17 opening statement or whatever he said to the jury, that doesn't  
15:28:13 18 alter the parameters of what we use expert reports for.

15:28:16 19 So the question is: Address exactly what  
15:28:21 20 Mr. Van Nest said, and is that included in the report?

15:28:24 21 MR. STAKE: Yes, Your Honor. Dr. Mitzenmacher will  
15:28:28 22 be opining that the client's device performs the selection, and  
15:28:34 23 he will be -- in providing that opinion, he needs to be able to  
15:28:40 24 explain that that's consistent with the claim language. That's  
15:28:44 25 exactly what he's done in his report and what he will be doing

15:28:48 1 today.

15:28:48 2 MR. VAN NEST: That's the second part of that where  
15:28:50 3 this cat jumped back in the bag. I don't have any objection to  
15:28:53 4 his describing what the client device does because we're in  
15:28:57 5 large agreement on that. But it's where he describes why  
15:29:00 6 that's okay in terms of the claim he never did in the report,  
15:29:06 7 and I haven't yet heard a paragraph where he did.

15:29:11 8 MR. STAKE: In the report, this paragraph 622 comes  
15:29:18 9 underneath this claim language that he'll be explaining. He'll  
15:29:22 10 be explaining that this selection by the client performs the  
15:29:25 11 claim language. I don't believe he'll be going beyond anything  
15:29:29 12 in the report.

15:29:31 13 MR. VAN NEST: If he's -- I'll take counsel's word.  
15:29:33 14 If he's not going to go beyond what's in the report, then he  
15:29:37 15 won't be able to use slide 84, at least as I understand what  
15:29:40 16 he's planning.

15:29:41 17 MR. STAKE: We'll take a close look at that slide.

15:29:44 18 MR. VAN NEST: Thank you.

15:29:44 19 THE COURT: All right. Take a close look at that.  
15:29:46 20 Now, the question of other exhibits?

15:29:50 21 MR. STAKE: Yes, Your Honor. There are three  
15:29:51 22 exhibits, P-14, P-830, and P-792. Our understanding is that  
15:30:04 23 Facebook has no objection to the admission of these three  
15:30:05 24 exhibits.

15:30:05 25 They're each -- one is Dr. Mitzenmacher's CV, and the

15:30:09 1 other two are Facebook or Instagram documents.

15:30:14 2 MR. VAN NEST: This is the first I'm hearing of it,  
15:30:16 3 Your Honor. I'll be happy to meet with counsel.

15:30:18 4 THE COURT: Why don't you take a look at that, and we  
15:30:21 5 will -- if they're not objected to, we'll admit them without  
15:30:24 6 them needing to be sponsored in front of a witness at a  
15:30:27 7 convenient time to get them in the record.

15:30:31 8 MR. VAN NEST: Normally I'm not accustomed to having  
15:30:33 9 CVs go into evidence, just like expert reports.

15:30:37 10 THE COURT: That's -- if he wants to offer it, you  
15:30:40 11 get to object or agree.

15:30:41 12 MR. VAN NEST: Thank you.

15:30:42 13 THE COURT: Then I'll make a decision. If your  
15:30:44 14 decision is to object, I'll make -- I will tell you I've seen  
15:30:51 15 it both ways, but I consider CVs different from reports. CVs  
15:30:56 16 are more a summary of what he's going to testify to on the  
15:31:00 17 stand about how great he is. A report is a whole lot different  
15:31:03 18 because it contains a whole lot of hearsay and whole lot of  
15:31:06 19 other things.

15:31:07 20 MR. VAN NEST: Sure. Thank you.

15:31:08 21 THE COURT: So, anyway, just think about that.

15:31:09 22 All right. We will be in recess for 15 minutes.  
15:31:12 23 We'll be until 3:45 because we took up a little time. Let the  
15:31:17 24 jury know that the court had some discussions with the lawyers,  
15:31:21 25 so they can extend their recess until 3:45. Court's in recess.

18:00:00 1 (Recess)

15:50:50 2 (Open court, jury present)

15:50:50 3 THE COURT: Mr. Stone, you may continue your direct  
15:50:53 4 examination of Mr. Ranney.

15:50:55 5 MR. STONE: Thank you, Your Honor.

15:50:56 6 Q. Before we took our break, just to reorient the jury, we  
15:51:02 7 were having a discussion about some mysterious outages. Do you  
15:51:07 8 recall that?

15:51:07 9 A. Yes.

15:51:07 10 Q. I have just one last question for you about that, which  
15:51:12 11 is: Approximately how many of your users did those outages  
15:51:15 12 impact?

15:51:15 13 A. Well, it was different every day, but on a bad day it  
15:51:19 14 could be as many as 10 percent of our new users were unable to  
15:51:24 15 sign up.

15:51:25 16 Q. Now, why are you here today?

15:51:27 17 A. We spent a lot of time, money, and effort, you know,  
15:51:32 18 building -- building the system, and I'm just here to describe  
15:51:36 19 what we build.

15:51:37 20 Q. Are you currently employed by Voxer?

15:51:39 21 A. No.

15:51:39 22 Q. Are you being paid to testify?

15:51:41 23 A. No.

15:51:41 24 Q. Do you have stock in Voxer?

15:51:43 25 A. No.



15:51:44 1 Q. Do you have options?

15:51:45 2 A. Yes.

15:51:45 3 Q. What are they worth today?

15:51:47 4 A. I don't know. I don't know how many I have or -- or what  
15:51:51 5 they're worth.

15:51:51 6 Q. Why did you receive them?

15:51:53 7 A. Well, my founder options expired after -- after I had left  
15:51:57 8 the company, and I have another full-time job. So that I'd be  
15:52:03 9 able to assist the company in that situation, they gave me the  
15:52:07 10 options. And assist includes this litigation.

15:52:10 11 Q. And are you taking vacation days to be here?

15:52:13 12 A. I am, yeah. I'm taking vacation from my full-time job to  
15:52:17 13 be here.

15:52:17 14 MR. STONE: No further questions. Pass the witness.

15:52:23 15 MR. PAIGE: Your Honor, may I approach the witness?

15:52:35 16 THE COURT: Remember what I told you earlier?

15:52:37 17 MR. PAIGE: Thank you, Your Honor.

15:53:14 18 May I proceed, Your Honor?

15:53:15 19 THE COURT: You may. And please state your name for  
15:53:17 20 the record.

15:53:18 21 MR. PAIGE: Gene Paige on behalf of Facebook and  
15:53:20 22 Instagram, Your Honor.

15:53:22 23 **CROSS-EXAMINATION**

15:53:22 24 **BY MR. PAIGE:**

15:53:22 25 Q. Good afternoon, Mr. Ranney.

15:53:24 1 A. Hello.

15:53:25 2 Q. My name is a Gene Paige. We haven't met before, have we?

15:53:29 3 A. I don't believe so.

15:53:30 4 Q. Okay. Now, you testified that you participated in some

15:53:33 5 meetings with Facebook, correct?

15:53:35 6 A. Uh-huh. Yep.

15:53:36 7 Q. Now, Voxer didn't share any of Voxer's source code with

15:53:40 8 Facebook at either of the meetings you participated in,

15:53:44 9 correct?

15:53:44 10 A. Source code? No.

15:53:45 11 Q. And Voxer didn't share any technical documents with

15:53:48 12 Facebook in either of the meetings you attended, correct?

15:53:51 13 A. It was all on the white board.

15:53:53 14 Q. And Facebook Live and Instagram Live, those didn't exist

15:53:59 15 at the time of those meetings, correct?

15:54:01 16 A. That's true, yeah.

15:54:02 17 Q. And there was no discussion of either Facebook Live or

15:54:05 18 Instagram Live at those meetings, right?

15:54:09 19 A. That's right.

15:54:09 20 Q. Now, you left Voxer in September of 2014, correct?

15:54:13 21 A. Yeah. That's correct.

15:54:14 22 Q. And that was around two years after your meetings with

15:54:18 23 Facebook, right?

15:54:18 24 A. Yep.

15:54:19 25 Q. At the time you left Voxer, Voxer had not successfully

15:54:25 1 enabled live video broadcasting in its app, correct?

15:54:31 2 A. That is true. But, as I said, the server supported it,  
15:54:34 3 but the app did not.

15:54:35 4 Q. And at the time of your deposition in 2021, you were still  
15:54:39 5 using the Voxer app, were you not?

15:54:41 6 A. Yeah.

15:54:42 7 Q. And at the time of your deposition in 2021, you didn't  
15:54:46 8 know whether Voxer enabled live video functionality since you  
15:54:50 9 left the company, right?

15:54:51 10 A. That's right, yeah. I -- it's not functionality that I  
15:54:55 11 personally use very often.

15:54:58 12 Q. Okay. Voxer didn't invent live audio streaming over the  
15:55:02 13 Internet, correct?

15:55:03 14 A. Live audio streaming? Yeah. It existed before we came  
15:55:08 15 along, yep.

15:55:09 16 Q. And Voxer did not invent live video streaming over the  
15:55:12 17 Internet, right?

15:55:13 18 A. Yeah. That's -- that's true. We did not invent that  
15:55:16 19 either.

15:55:16 20 Q. Skype is one example of a system that was capable of live  
15:55:21 21 streaming video over the Internet before Voxer was founded,  
15:55:24 22 correct?

15:55:25 23 A. Yep.

15:55:26 24 Q. And Voxer didn't invent time-shifting for video, right?

15:55:30 25 A. Yeah. As I said earlier, TiVo was an example of a simple

15:55:35 1 time-shifting system.

15:55:36 2 Q. And Voxer didn't invent adaptive bitrate streaming,  
15:55:40 3 correct?

15:55:40 4 A. That's correct. We did not invent that either.

15:55:43 5 Q. Voxer didn't invent producing multiple bitrate versions of  
15:55:49 6 a media stream, correct?

15:55:51 7 A. In -- yeah, in isolation, that is not a thing that we --  
15:55:55 8 that we invented either.

15:55:56 9 Q. And Voxer didn't invent communication systems where a  
15:56:01 10 server sits between a sending device and the receiving device,  
15:56:05 11 correct?

15:56:05 12 A. Yeah. That's correct.

15:56:06 13 Q. Okay. Now, I think you mentioned, before you left Voxer  
15:56:10 14 in 2014, you had received some Voxer stock options, right?

15:56:15 15 A. Before I left?

15:56:18 16 Q. You said you had founders --

15:56:19 17 A. Yeah, yeah. Sorry. Yes. When we started the company,  
15:56:23 18 I -- I received a number of options, yeah.

15:56:26 19 Q. And stock options, those are the right to buy stock for a  
15:56:30 20 certain price --

15:56:31 21 A. That's right.

15:56:32 22 Q. -- right?

15:56:32 23 A. Yep.

15:56:33 24 Q. And those stock options expired, right?

15:56:35 25 A. They did, yeah. At a time after I left the company, they

15:56:38 1 expired.

15:56:39 2 Q. Yeah. And that meant you no longer had the right to buy

15:56:43 3 Voxer stock at that price, right?

15:56:44 4 A. That's right.

15:56:45 5 Q. Now, in 2020, six years after you left the company, Voxer

15:56:51 6 issued you new stock options, correct?

15:56:53 7 A. That's right.

15:56:54 8 Q. Okay. You were granted those new stock options in May or

15:56:59 9 June of 2020, right?

15:57:00 10 A. It sounds about right. I can't remember the exact time.

15:57:03 11 Q. Okay. And Mr. Irv Remedios told you around that time that

15:57:08 12 you would be receiving grant stock options, correct?

15:57:12 13 A. Yes.

15:57:13 14 Q. And Mr. Remedios, he was the CEO of Voxer in 2020, right?

15:57:17 15 A. Yeah. That's right.

15:57:19 16 Q. Now, Voxer provided you with a stock option agreement in

15:57:22 17 connection with those 2020 stock options, right?

15:57:25 18 A. Yep.

15:57:26 19 Q. Okay. Could I ask you to open your binder to DTX618.

15:57:36 20 MR. PAIGE: And, Your Honor, this is in evidence.

15:57:38 21 A. Okay. Yep. I have that.

15:57:42 22 Q. Now, this is a stock option agreement that Voxer provided

15:57:45 23 you in 2020, correct?

15:57:46 24 A. Yes. This looks like -- this looks like the agreement.

15:57:49 25 Q. Okay. And that's your name on the signature line of

15:57:51 1 page 1, right?

15:57:56 2 A. Yeah. That's my electronic signature where I click the  
15:58:01 3 thing. That's no my handwriting. But I did click the  
15:58:01 4 electronic agreement and agree to it.

15:58:03 5 Q. You signed it?

15:58:04 6 A. I did, yes. I'm just saying that's not my signature, my  
15:58:07 7 handwriting signature.

15:58:08 8 Q. Fair enough. Now the agreement, the options, were granted  
15:58:16 9 June 4th, 2020, right?

15:58:17 10 A. Yeah. That's what it says.

15:58:18 11 Q. And June 2020 is around the time that Mr. Remedios told  
15:58:22 12 you that Voxer would be granting you new options, right?

15:58:24 13 A. Yeah. Yeah.

15:58:25 14 Q. And this agreement, it grants you 1 million Voxer stock  
15:58:33 15 options over time, right?

15:58:34 16 A. Yeah. That's what it says.

15:58:35 17 Q. An each option, that allows you to purchase a share of  
15:58:38 18 Voxer stock for one penny, right?

15:58:40 19 A. Yeah. One penny, yep.

15:58:42 20 Q. Okay. And the agreement, it incorporated the applicable  
15:58:46 21 documents available for download and connection with the equity  
15:58:50 22 award, right?

15:58:51 23 A. Yeah. Yeah. For sure.

15:58:53 24 Q. Okay. And there are three plan options, documents, listed  
15:58:58 25 on this page, right?

15:58:59 1 A. Yeah.

15:58:59 2 Q. In the blue there?

15:59:01 3 A. Yeah, yeah, yeah.

15:59:01 4 Q. And one of those is a 2012 equity incentive plan, right?

15:59:06 5 A. Yeah.

15:59:07 6 Q. Can you turn a few pages and look at that, the 2012 equity

15:59:12 7 incentive plan, please?

15:59:15 8 A. Is that on page 6 of 44?

15:59:17 9 Q. Page 6. Yes, sir.

15:59:19 10 A. Yeah. Yep.

15:59:22 11 Q. Now, the first paragraph there is entitled "Purpose,"

15:59:25 12 right?

15:59:25 13 A. Yeah.

15:59:26 14 Q. And an it says: "The purpose of this plan is to provide

15:59:30 15 incentives to attract, retain, and motivate eligible persons

15:59:37 16 whose present and potential contributions are important to the

15:59:40 17 success of the company, its parents, and subsidiaries by

15:59:46 18 offering eligible persons an opportunity to participate in the

15:59:49 19 company's future performance through the grant of awards

15:59:53 20 covering shares." Right?

15:59:55 21 A. Uh-huh. Yep.

15:59:55 22 Q. And you weren't employed by Voxer when you received this

15:59:59 23 option grant in 2020, right?

16:00:00 24 A. That's correct.

16:00:01 25 Q. You weren't working as a consultant for Voxer in 2020,

16:00:05 1 right?

16:00:05 2 A. By then I had not -- I hadn't been doing -- I hadn't been  
16:00:09 3 talking to them too much. Irv and I had many conversations  
16:00:12 4 over the years about different projects, you know, and checking  
16:00:15 5 in. But, yeah, I wasn't -- I was not what you would call a  
16:00:18 6 consultant for Voxer anymore.

16:00:20 7 Q. And you weren't a contractor?

16:00:21 8 A. Not a contractor. I wasn't working for Voxer anymore.

16:00:24 9 Q. Okay. In fact, you were working full-time for Uber in  
16:00:27 10 June of 2020, right?

16:00:29 11 A. Yeah. That's right.

16:00:30 12 Q. So the purpose of this option grant in 2020 was not to  
16:00:33 13 retain you, correct? You weren't working there?

16:00:35 14 A. That's right, yeah.

16:00:36 15 Q. And you didn't formally provide any services to Voxer in  
16:00:39 16 2020, right?

16:00:41 17 A. True.

16:00:42 18 Q. So the purpose of this grant was not to attract you  
16:00:45 19 either, right?

16:00:46 20 A. Yep.

16:00:47 21 Q. Okay. And, again, the first sentence begins: "The  
16:00:50 22 purpose of this plan is to provide incentives to attract,  
16:00:53 23 retain, and motivate eligible persons whose present and  
16:00:57 24 potential contributions are important to the success of the  
16:01:01 25 company." Right?



16:01:01 1 A. Yeah. I see that, yep.

16:01:03 2 Q. Okay. Now, the stock option agreement on that first page  
16:01:09 3 has a space to list the grant reason on the first page, right?

16:01:12 4 A. Oh, okay.

16:01:13 5 Q. You see that up at the top?

16:01:18 6 A. Option, grant holder, grant reason. None entered. Yes.  
16:01:23 7 I see that.

16:01:24 8 Q. That was my next question. In red letters "none entered"  
16:01:27 9 for reason?

16:01:27 10 A. Yeah. Yeah.

16:01:28 11 Q. Okay. But when you discussed why Voxer was granting these  
16:01:33 12 stock options to you with Mr. Remedios, Mr. Remedios said that  
16:01:37 13 it was because Voxer hoped that it could count on your help if  
16:01:40 14 we need it, correct?

16:01:42 15 A. That's right, yeah.

16:01:42 16 Q. Okay. You hadn't asked for those additional stock  
16:01:45 17 options, correct?

16:01:46 18 A. No, I did not.

16:01:47 19 Q. And prior to 2020, Voxer had not reached out to you to  
16:01:50 20 grant you additional stock options since you left Voxer, right?

16:01:54 21 A. Nope.

16:01:54 22 Q. And sometime after this lawsuit was filed, Mr. Katis, he  
16:01:59 23 told you you might be called on to testify in this case, right?

16:02:03 24 A. Yeah. Yeah.

16:02:04 25 Q. Okay. Now, the stock option agreement states on page 1

16:02:08 1 the board approved the option grant on June 4, 2020, right?

16:02:12 2 A. Yeah. That's what it says.

16:02:14 3 Q. Let's look at page 2 to see when the stock options began

16:02:18 4 to vest. What's the first date the stock options began to vest

16:02:22 5 according to that page, vesting start?

16:02:24 6 A. Vesting start, January 6, 2020.

16:02:28 7 Q. And you're aware this lawsuit was filed on January 7th,

16:02:31 8 2020, aren't you?

16:02:32 9 A. Yeah.

16:02:35 10 Q. Thank you, Mr. Ranney.

16:02:37 11 MR. PAIGE: I pass the witness.

16:02:39 12 MR. STONE: Just a few questions, Your Honor.

16:02:40 13 THE COURT: You may proceed.

16:02:42 14 **REDIRECT EXAMINATION**

16:02:42 15 **BY MR. STONE:**

16:02:42 16 Q. Mr. Ranney, you were asked about what it was that Voxer

16:02:46 17 didn't invent. Do you recall that?

16:02:48 18 A. Oh, yeah.

16:02:48 19 Q. Did Voxer invent the subject matter of the '270 patent?

16:02:52 20 A. Yes.

16:02:53 21 Q. Did Voxer invent the subject matter of the '557 patent?

16:02:57 22 A. Yes.

16:02:58 23 Q. The patent officer agreed?

16:03:00 24 A. Yes.

16:03:00 25 Q. And did Voxer invent the subject matter of another 148

16:03:04 1 patents that you're a named inventor on?

16:03:06 2 A. Yes.

16:03:07 3 MR. STONE: No further questions.

16:03:09 4 THE COURT: Any recross?

16:03:11 5 MR. PAIGE: No, Your Honor. Thank you.

16:03:12 6 THE COURT: You may step down.

16:03:14 7 THE WITNESS: Okay.

16:03:23 8 MR. STAKE: Voxer calls Professor

16:04:19 9 Michael Mitzenmacher.

16:04:19 10 THE COURT: All right. And please again state your  
16:04:21 11 name for the record.

16:04:22 12 MR. STAKE: Sam Stake on behalf of Voxer.

16:04:56 13 (Witness sworn)

16:04:56 14 **MICHAEL MITZENMACHER,**

16:04:56 15 having been first duly sworn, testified as follows:

16:04:56 16 **DIRECT EXAMINATION**

16:04:56 17 **BY MR. STAKE:**

16:04:56 18 Q. Good afternoon, Dr. Mitzenmacher.

16:04:59 19 A. Good afternoon.

16:04:59 20 Q. State your full name and where you currently live.

16:05:01 21 A. Michael David Mitzenmacher. I live in Lexington,  
16:05:04 22 Massachusetts.

16:05:04 23 Q. And what is your job?

16:05:05 24 A. I'm a professor at Harvard University.

16:05:09 25 Q. What are you here to testify about today?

16:05:12 1 A. I'm here to testify today, I guess, about the infringement  
16:05:16 2 of the two patents that we've talked about and some related  
16:05:19 3 issues.

16:05:20 4 Q. Have you prepared a set of slides to share with the jury?

16:05:26 5 A. Yes. I prepared a set of slides, demonstratives, to share  
16:05:31 6 with the jury as I discuss this.

16:05:32 7 Q. And these are your slides up here?

16:05:34 8 A. Yes.

16:05:34 9 Q. Okay. Before we turn to Voxer's patents, I'd like to ask  
16:05:42 10 you a few questions about your background. Could you please  
16:05:43 11 tell us about your education.

16:05:45 12 A. Sure. I got my undergraduate degree at Harvard University  
16:05:49 13 in 1991, where I majored in mathematics and computer science.  
16:05:54 14 I then got to go for a year on a fellowship to the University  
16:05:58 15 of Cambridge in England to study mathematics. I received what  
16:06:02 16 they call a certificate of advanced study. It's sort of the  
16:06:06 17 equivalent to a master's. And then I came back to Berkeley,  
16:06:10 18 where I got my Ph.D. in computer science in 1996.

16:06:14 19 Q. Thank you. What kind of thesis work did you do?

16:06:17 20 A. My Ph.D. thesis involved load balancing for large-scale  
16:06:22 21 systems. So, in particular, it would apply to various sorts of  
16:06:27 22 networking systems and web-based traffic systems.

16:06:30 23 Q. When did you become a professor at Harvard?

16:06:38 24 A. I started in January 1999. After I graduated, I went  
16:06:40 25 to -- I actually worked at a research lab for a couple of years

16:06:42 1 at Digital Systems Research Center and then joined Harvard in  
16:06:46 2 1999. And I've been there since.

16:06:47 3 Q. Do you teach any courses at Harvard?

16:06:50 4 A. Yes, I do. I teach both undergraduate and graduate  
16:06:53 5 courses.

16:06:54 6 Q. And are there any particular courses that you teach?

16:06:57 7 A. Yeah. So my undergraduate course is on algorithms and  
16:07:03 8 data structures. It's one of the core courses in the  
16:07:05 9 curriculum. My graduate courses, the one I'm teaching now this  
16:07:09 10 semester, relates to networks and, in particular, algorithms  
16:07:14 11 and data structures for improved networks and network  
16:07:18 12 efficiency. And my other graduate class that I teach in other  
16:07:20 13 years is on randomized algorithms and probabilistic processes.

16:07:26 14 Q. Do you have any industry experience?

16:07:27 15 A. Yes, I do. So besides, you know, working at Harvard, I've  
16:07:34 16 also obviously done some work as an expert witness in the past.  
16:07:40 17 I've also done some consulting at companies. Again, I work at  
16:07:43 18 Digital and consulted for them for a bit. After I left,  
16:07:49 19 Microsoft, a company called Digital Fountain, eHarmony, Akamai,  
16:07:54 20 Adverplex.

16:07:54 21 Q. Can you give us some examples of the kind of work you've  
16:07:58 22 done for these companies?

16:07:59 23 A. Sure. So eHarmony is always a fun one to talk about. If  
16:08:04 24 people remember, eHarmony was one of the matchmaking companies.  
16:08:07 25 And there's actually -- I got to be on their science board for

16:08:11 1 a few years, a there's actually a lot of algorithmic work. You  
16:08:14 2 know, there's the sort of psychology aspect of trying to figure  
16:08:17 3 out the matches, but then there's the algorithmic work of,  
16:08:21 4 well, if there's one popular person, you don't want to match  
16:08:24 5 them with everybody, so how do you manage the matches to sort  
16:08:27 6 of spread them out and evenly distribute them among everyone.

16:08:33 7 Q. Are you the author of any books or publications?

16:08:37 8 A. Yeah. So I have, for instance, written a textbook that  
16:08:43 9 has to do with my graduate course on probability computing,  
16:08:47 10 randomization and probabilistic techniques and algorithms and  
16:08:48 11 data analysis.

16:08:48 12 And I also, you know, I should say, as a professor,  
16:08:55 13 you know, you have a variety of jobs. Obviously, one job is  
16:08:56 14 teaching students, which is something I do greatly enjoy. And  
16:09:00 15 another big part of the job at a research university is  
16:09:04 16 continuing to do original research. So at this point in my  
16:09:07 17 career, I've published over 250 academic papers.

16:09:14 18 Q. Are you the inventor on any patents?

16:09:15 19 A. Yes, I am. I'm also listed as an inventor and coinventor  
16:09:18 20 on 19 issued patents.

16:09:24 21 Q. What currently is your main research area?

16:09:25 22 A. Yes. So currently my research area, there's sort of two  
16:09:28 23 things that are my main areas that I have grants on, for  
16:09:31 24 instance. One of them has to do with, actually, as you might  
16:09:35 25 imagine, algorithms and data structures for networking

16:09:39 1 applications. So there I'm actually working at Harvard with --  
16:09:42 2 this is a joint grant with the networking faculty, and we're  
16:09:46 3 working together on a variety of problems, many related to  
16:09:49 4 network telemetry. So that telemetry is measuring the network,  
16:09:55 5 what's going on in network, trying to find where problems are,  
16:09:58 6 where issues are in advance by taking these measurements as  
16:10:02 7 things are going through the network.

16:10:03 8 My other research grant is on kind of a new area that  
16:10:07 9 I'm at the beginning of called algorithms with predictions. So  
16:10:14 10 the idea here is, can we take predictions from things like  
16:10:16 11 machine learning tools or machine learning algorithms and use  
16:10:20 12 them to get better algorithms and data structures that we can  
16:10:23 13 use, you know, for real applications.

16:10:32 14 Q. Professor Mitzenmacher, have you received any awards?

16:10:35 15 A. Yeah. So back in college I received a Hoopes prize. This  
16:10:37 16 is a prize given to, you know, the top senior thesis in the  
16:10:42 17 various areas. When I started my career as a professor, the  
16:10:45 18 National Science Foundation, that's one of the government  
16:10:50 19 groups that funds research, particularly for people in  
16:10:54 20 universities and elsewhere, I got what's called a CAREER award.  
16:10:58 21 That's an award given to, you know, young promising faculty to  
16:11:04 22 help them at the start of their careers.

16:11:06 23 Very recently I was honored to share the ACM Paris  
16:11:13 24 Kanellakis Theory and Practice Award. So this had to do  
16:11:16 25 actually for my work on load balancing. And, you know, the

16:11:21 1 award there is designed to -- for work that has had an impact  
16:11:26 2 on both theory and practice. And I've also won various Best  
16:11:30 3 Papers awards at conferences and so on, and some of them are  
16:11:35 4 listed here.

16:11:36 5 Q. Are you being compensated for your work on this case?

16:11:39 6 A. Yes. I am being compensated for my work. My standard  
16:11:43 7 rate of \$900 an hour.

16:11:46 8 Q. Is your compensation tied in any way to the results of  
16:11:50 9 this case?

16:11:50 10 A. No. I'm only getting paid for my time.

16:11:54 11 MR. STAKE: Your Honor, at this time Voxer tenders  
16:11:56 12 Dr. Mitzenmacher as an expert in the fields of computer  
16:11:59 13 networking and multimedia processing.

16:12:02 14 MR. VAN NEST: No objection, Your Honor.

16:12:03 15 THE COURT: All right. The witness may testify and  
16:12:05 16 express opinions in his area of expertise, as described by  
16:12:10 17 counsel.

16:12:17 18 Q. (BY MS. STAKE) Now you mentioned that you analyzed two  
16:12:19 19 Voxer patents. What conclusions did you reach?

16:12:22 20 A. Yes. So I'll be discussing today in my discussion of the  
16:12:25 21 patents the '270 patent that we've been talking about today.  
16:12:29 22 I'll be discussing infringement of Claims 34, 47, 48 and 51.  
16:12:35 23 And it is my opinion that those claims are infringed. For the  
16:12:39 24 '557 patent, I'll be offering my opinion that Claims 1 and nine  
16:12:45 25 are infringed.



16:12:46 1 I will also discuss some aspects that relate to  
16:12:50 2 something call technical apportionment. I'll describe that  
16:12:54 3 more in detail later. That's looking at the process to try and  
16:12:57 4 provide sort of a technical basis for what the underlying value  
16:13:01 5 is to the products -- of the patents to the Facebook products.

16:13:06 6 And I may also come back later in these proceedings,  
16:13:11 7 I understand, you know, after I present argument, as the Court  
16:13:16 8 has said, you know, Facebook will come up and present their  
16:13:19 9 argument. And on some of the issues such as, you know, some  
16:13:27 10 issues may be reached on infringement or responding to validity  
16:13:31 11 or noninfringing alternatives and licenses, I may come back and  
16:13:35 12 provide some opinions.

16:13:37 13 Q. Now, briefly, what materials did you consider in forming  
16:13:42 14 your opinions?

16:13:45 15 A. So when you're doing this job as an expert witness, you  
16:13:48 16 sort of look at everything you can get your hands on. So, you  
16:13:52 17 know, obviously a starting point is my own experience both in  
16:13:56 18 industry and as an academic. But then starting with the case,  
16:14:01 19 obviously, you start with the patents, and you look at the  
16:14:05 20 patents themselves, but also the histories of the patents.  
16:14:09 21 Those are called the file histories. We've heard the inventors  
16:14:11 22 talking about dating all the way back to these provisional  
16:14:14 23 patents, which is where it started.

16:14:16 24 Besides that you look at the documents that are  
16:14:20 25 produced in the case, in particular, the documents produced by

16:14:24 1 Facebook. So Facebook has a variety of technical documentation  
16:14:29 2 describing both the Facebook Live product and the Instagram  
16:14:33 3 Live product that I examined and studied. I also got to look  
16:14:37 4 at the source code. I also, you know, did some testing of  
16:14:41 5 the -- of the accused products and, in particular, focusing on  
16:14:44 6 the accused functionality related to the patent claims.

16:14:49 7 Finally, there are a number of documents that are  
16:14:52 8 given or presented by the court. So there's something called a  
16:14:56 9 claim construction order where the court may define some of the  
16:14:59 10 terms of the claims that need defining. There's depositions.  
16:15:03 11 So, you know, the attorneys for Voxer got to essentially  
16:15:09 12 interview or ask questions of the Facebook engineers, and I  
16:15:13 13 looked at their testimony and utilized that.

16:15:16 14 There's various other documentation that, you know, I  
16:15:20 15 think we've already seen in these proceedings where the lawyers  
16:15:23 16 can ask questions to the other side and get back responses, so  
16:15:28 17 I looked at those. And, of course, I considered the expert  
16:15:31 18 reports, you know, given by the other side and their experts as  
16:15:35 19 well.

16:15:36 20 Q. Are you going to present to the jury here today all of the  
16:15:39 21 evidence you saw that Facebook infringes Voxer's patents?

16:15:43 22 A. No. But simply because we just don't have time. You  
16:15:47 23 know, there's a limited amount of time set for the case. You  
16:15:50 24 know, we don't want to keep you here for a month. I don't  
16:15:53 25 think you want to be here for a month. So I had to go through

16:15:56 1 and try and pick out, you know, what I thought was compelling  
16:16:01 2 evidence or the best evidence for you.

16:16:03 3 Q. You mentioned claim construction. What construction did  
16:16:11 4 you apply when analyzing the claims of the '270 and '557  
16:16:15 5 patents?

16:16:19 6 A. So I utilized the plain and ordinary meaning. Well, in  
16:16:22 7 particular, there was a specific term used in the patent claims  
16:16:28 8 that the court construed, "end-to-end connection." And the  
16:16:30 9 court said that term should have its plain and ordinary  
16:16:34 10 meaning. And for all other terms, I also used the plain and  
16:16:36 11 ordinary meaning. And, again, one understands that's in the  
16:16:39 12 context of the patents and how they're used there.

16:16:45 13 Q. Is there any dispute that all the terms of these patents  
16:16:49 14 should be given their plain and ordinary meaning with Facebook?

16:16:51 15 A. No. Not that I'm aware of.

16:16:59 16 Q. Could you tell us a bit about the two patents you'll be  
16:17:01 17 discussing today.

16:17:01 18 A. Yes. So, as you've seen before, the patents are  
16:17:04 19 10,142,270, and we'll just refer to that as the '270 patent,  
16:17:10 20 10,511,557, that's the '557 patent. They both share a title  
16:17:17 21 "Telecommunication and Multimedia Management Method and  
16:17:20 22 Apparatus." And they share the inventors, some of whom we've  
16:17:25 23 already heard from.

16:17:28 24 Q. Now, I want you to take us back to the state of computer  
16:17:33 25 communications at the time that the '270 and '557 patents were

16:17:38 1 filed. What year was that?

16:17:39 2 A. They were filed, as we've heard, in 2007.

16:17:42 3 Q. I see on this slide you refer to real-time media and  
16:17:46 4 time-shifted media. What do you mean by the word "media" here?

16:17:50 5 A. So, as we've heard, again, "media" can refer to different  
16:17:56 6 types of information, in particular, the ones of most issue  
16:17:59 7 here are audio and video, although, again, texts and other  
16:18:03 8 things can be media as well.

16:18:05 9 Q. Now, how was the way that computers communicated media in  
16:18:09 10 2007 different than today?

16:18:11 11 A. Well, so as the patent describes, you know, in the 2007 or  
16:18:17 12 so time frame, you know, there were really two main ways that  
16:18:22 13 you would see in systems for dealing with media. So one is  
16:18:27 14 something that we'll refer to as real time. And the idea  
16:18:31 15 there, as we've heard, is that real time is supposed to be sort  
16:18:36 16 of as it's happening, as you're generating, say, the video gets  
16:18:40 17 sent and received by the other side. And, again, we do keep in  
16:18:44 18 mind real time is like best effort, right? It can't just  
16:18:48 19 instantaneously get there, but it will get there as fast as the  
16:18:51 20 network reasonably can get it.

16:18:53 21 And the way real-time media would work, though, is --  
16:18:57 22 you know, again it's the sort of telephone analogy, that in  
16:19:01 23 order to send this real-time media, you know, we'd first have  
16:19:05 24 to establish a connection. You'd have to be like, okay, let's  
16:19:10 25 get ourselves set up. We're going to set up a phone call.

16:19:12 1 That can be done, you know, for instance, through network  
16:19:17 2 protocols. We set up a connection, and then once the  
16:19:19 3 connection is set up and everyone is ready, then I can start  
16:19:23 4 sending a you video.

16:19:25 5 And that way -- and, again, that can be  
16:19:27 6 one-directional or bidirectional, and bidirectional we might be  
16:19:32 7 trying to exchange messages in real time.

16:19:35 8 Q. And in time-shifting media?

16:19:37 9 A. In time-shifting media, that's more of an e-mail analogy,  
16:19:39 10 that you'd have to -- like, I might prepare a video in advance,  
16:19:43 11 record the whole thing, and then it's, like, okay, I've got my  
16:19:46 12 message. Now I'm just going to send it to you some way. You  
16:19:49 13 know, there are various network protocols for that, or, in some  
16:19:52 14 cases, you can even send it as, like, an e-mail type  
16:19:55 15 attachment.

16:19:56 16 Q. Were there any drawbacks of these pre-2007 computer  
16:20:02 17 communication methods?

16:20:04 18 A. Yeah. I mean, each of them -- and, again, these are sort  
16:20:07 19 of described and discussed in the patents in the background.  
16:20:11 20 You know, each of them had their own problems. So if you're  
16:20:15 21 doing real time, you know, you'd have to establish this  
16:20:19 22 end-to-end connection. You'd have to get both parties together  
16:20:22 23 on the system, agree to get going, and then, you know, once the  
16:20:26 24 connection is established, you could start.

16:20:28 25 And, you know, so everything relied on that

16:20:31 1 connection. And, in particular, if that connection was broken  
16:20:34 2 in some way or if the connection was lost, you know, that was  
16:20:37 3 it. You were stuck. The media would drop, and you would have  
16:20:41 4 to try again.

16:20:43 5 For time-shifted, what you're losing there, what the  
16:20:46 6 drawback is, is that it's a one-way type system. You don't get  
16:20:51 7 that benefit of interactivity. You don't get that it's, you  
16:20:55 8 know, you're seeing what's happening in real time. And there  
16:20:59 9 are various aspects of, you know, the time-shifted type systems  
16:21:03 10 that were both burdensome and time-consuming, again, like  
16:21:07 11 having to set up or record everything in advance.

16:21:10 12 Q. Now, in your review of the materials that you considered,  
16:21:13 13 were the Voxer inventors aware of these problems in prior -- in  
16:21:18 14 prior computer communications systems?

16:21:21 15 A. Yes. I mean, this is -- these are the sorts of things  
16:21:24 16 that they talk about in the patent, and these are the problems  
16:21:27 17 that they state that they were aiming to solve.

16:21:30 18 Q. Now, at a high level, how did Voxer improve upon these  
16:21:34 19 preexisting methods?

16:21:36 20 A. So at a high level, what they were trying to do is build a  
16:21:44 21 sort of hybrid system that would give us the best of both of  
16:21:46 22 these worlds, right, that would allow for you to do a real-time  
16:21:50 23 communication without having to do this sort of setting up to  
16:21:53 24 begin with. Ideally, you know, we hear this push-to-talk where  
16:21:59 25 you just push a button. You know, you can push a button and

16:22:02 1 just start, and it just appears instantaneous. There's no wait  
16:22:07 2 or delay because you're not having to set up this sort of  
16:22:09 3 connection. But, at the same time, you know, maybe the other  
16:22:12 4 person is not even on the network right now, right? So you  
16:22:15 5 have things like that that the data would be recorded and kept,  
16:22:18 6 and so someone could come back and look at it later.

16:22:22 7           So the idea was to create a sort of seamless, natural  
16:22:26 8 hybrid specifically for computer communication and, in  
16:22:28 9 particular, video type and audio messages, you know, that  
16:22:34 10 would -- that would give the benefits of both and take away the  
16:22:37 11 problems of each.

16:22:39 12 Q. Now, we'll get more into the details of Voxer's solutions  
16:22:44 13 when we analyze their claimed inventions. But, for now, did  
16:22:49 14 you prepare an animation to explain Voxer's patented technology  
16:22:52 15 at a high level?

16:22:53 16 A. Yeah. So before we get sort of diving in. And, trust me,  
16:22:57 17 I think we're going to spend plenty of time getting into the  
16:23:01 18 detailed actual elements of the claim, I want to try and  
16:23:04 19 present things at a high level to ground us when we get to that  
16:23:07 20 point.

16:23:07 21 Q. So what are the components that you included in your  
16:23:10 22 animation here?

16:23:12 23 A. So my animation the idea is we have a sender, someone who  
16:23:15 24 is going to want to send a video. We have multiple recipients,  
16:23:19 25 here labeled A and B, who are going to at the end of this

16:23:25 1 receive the video. And we have, you know, the servers in the  
16:23:28 2 middle that are going to help manage and handle the data in  
16:23:32 3 order to -- in order to relieve the issues that we've been  
16:23:37 4 talking about from the point of view of the sender and the  
16:23:39 5 receiver.

16:23:40 6 Q. Now, have you identified several hallmarks of Voxer's  
16:23:46 7 technology?

16:23:47 8 A. Yes. And I'll discuss -- again, this is at a high level.  
16:23:49 9 We'll get into how these relate to the claims in a minute.  
16:23:53 10 But, again, just to ground us, you know, what I consider some  
16:23:55 11 of the hallmarks of Voxer's technology.

16:23:58 12 Q. Okay. What was first key feature of Voxer's technology?

16:24:02 13 A. Right. So one of the key features is this idea that we  
16:24:05 14 can send the media before ascertaining the location of the  
16:24:09 15 identified recipient. Okay. This is the idea that the sender  
16:24:13 16 again can just start, and we don't have to have this end-to-end  
16:24:16 17 connection set up. I don't have to know where you are or where  
16:24:20 18 the information is going because I'm sending it first to this  
16:24:24 19 intermediate server who will manage a lot of that process.

16:24:30 20 Q. And what is an example of recipient location?

16:24:34 21 A. So a recipient location, we'll talk about this more in the  
16:24:36 22 claims, an example of that would be what's called, like, an IP  
16:24:41 23 address. So IP stands for Internet Protocol, and there's an  
16:24:45 24 object called the Internet protocol address. So in the sort of  
16:24:49 25 standard version, this looks like a collection of numbers, and



16:24:56 1 those numbers represent an address or a way to route that  
16:24:59 2 information to a user.

16:25:03 3 Q. Okay. What's the second key feature of Voxer's  
16:25:06 4 technology?

16:25:06 5 A. So another key feature is generating what is called  
16:25:09 6 transcoded and degraded versions of the media. So the  
16:25:13 7 transcoding here just means you're getting the data in say one  
16:25:17 8 format and you might transcode it or put it into other formats.  
16:25:22 9 In particular, you know, it might be even the same,  
16:25:24 10 quote/unquote, format, but different bitrates, different  
16:25:27 11 qualities.

16:25:29 12 And the reasons that you would do this, there are --  
16:25:32 13 there are variety of reasons. One of the key ones that comes  
16:25:36 14 up in the patent is, you know, the network conditions may make  
16:25:39 15 it difficult to send, like, a very high quality video to a user  
16:25:43 16 at a given time, right? If they're off in the middle of the  
16:25:49 17 city, they may not have great Internet connection, you may want  
16:25:53 18 to -- they may need to get a lower quality video, something  
16:25:56 19 that takes less bits, less information to send, so that they  
16:25:59 20 can still receive it in a timely fashion. Whereas someone with  
16:26:02 21 a really good connection might be able to get, you know,  
16:26:05 22 something of higher quality, and there may be a range in  
16:26:08 23 between.

16:26:09 24 Q. What are the third and fourth key features of Voxer's  
16:26:13 25 technology that you've identified?

16:26:15 1 A. So one of the features -- again, this is just sort of key  
16:26:20 2 basic feature -- is the ability to stream real-time media. You  
16:26:23 3 know, part of the design is that it would allow both a  
16:26:27 4 real-time streaming component and, you know, again this  
16:26:32 5 time-shifted component so that if you're not available now, you  
16:26:35 6 may see it later.

16:26:36 7 Related to that -- that aspect is this no end-to-end  
16:26:40 8 connection. What they wanted to be able to provide to users is  
16:26:45 9 that you would have streaming, but you wouldn't have to first  
16:26:48 10 set up this one-on-one -- or this connection between the users  
16:26:52 11 in order to achieve that.

16:26:55 12 Q. What are the challenges of transmitting and receiving  
16:26:58 13 real-time media?

16:27:00 14 A. There are many challenges in streaming. You know, we've  
16:27:04 15 already talked about how it relates to one is, like, how do you  
16:27:07 16 get the user something of good quality. But there are lots of  
16:27:11 17 challenges or issues related to how you get it there in a  
16:27:15 18 timely fashion so that, to the user, it seems like a clear and  
16:27:19 19 seamless experience.

16:27:20 20 Q. Finally, what is the fifth hallmark of Voxer's technology  
16:27:25 21 that you've identified?

16:27:27 22 A. So the last one is enabling the rendered media in a  
16:27:36 23 time-shifted mode. So, again, we heard this from the  
16:27:38 24 inventors, it's one of the key descriptions in the patent. You  
16:27:42 25 want to have this ability to both send in real time, but also

16:27:46 1 allow for time-shifting, that is, allow it to be accessed later  
16:27:51 2 for users that may have joined after the video is over and they  
16:27:55 3 want to access it at a later time.

16:27:59 4 Q. Thank you. And when we combine all of these hallmarks,  
16:28:03 5 what are the benefits of Voxer's patented technology?

16:28:07 6 A. So there are a number of benefits. Here I'm going to  
16:28:12 7 highlight what I think are some of the most important ones and,  
16:28:15 8 in particular, ones related to the claims we'll be talking  
16:28:18 9 about.

16:28:19 10 You know, you have this real-time ability that  
16:28:22 11 enables senders and recipients to interact in a real-time  
16:28:26 12 fashion.

16:28:26 13 You have scalability. So by using these intermediate  
16:28:31 14 servers, okay, you can imagine that a problem is, if I'm taking  
16:28:35 15 my phone and I want to send audio or video out to -- to  
16:28:39 16 millions of users, and, you know, I have to set up a separate  
16:28:43 17 connection with each of these users, you know, my phone is  
16:28:46 18 going to get overwhelmed pretty quickly. It's not going to be  
16:28:50 19 able to manage all those different connections.

16:28:52 20 So by using this intermediate server system in order  
16:28:55 21 to handle and manage the load, you're able to create what we've  
16:28:59 22 heard of as scalability, the ability to handle more users and,  
16:29:03 23 in particular, more simultaneous users in a natural and ready  
16:29:09 24 fashion. So this sort of approach allows scalability to  
16:29:12 25 support, you know, in cases up to millions or larger recipients

16:29:16 1 at the same time.

16:29:17 2 Another feature is that it makes the system more  
16:29:22 3 adaptable. And, in particular, the claims are worried about  
16:29:24 4 adaptation to things like network quality. Again, what is the  
16:29:28 5 bandwidth, what level of traffic is your device currently able  
16:29:33 6 to handle according to the network, and it also relates to --  
16:29:37 7 to adaptability of device capabilities.

16:29:40 8 There's flexibility. So because we don't have to set  
16:29:43 9 up any sort of end connection before the transmission starts, I  
16:29:47 10 can -- someone can start a live video and people can join in to  
16:29:51 11 that live video even if it's already started as long as it's  
16:29:56 12 still going.

16:29:56 13 And then, finally, the time-shifted nature means  
16:29:59 14 people can, you know, join or at least watch the video or hear  
16:30:04 15 the audio even after it's done, right? So after it's done,  
16:30:09 16 it's saved, and it can be accessible to users after the fact.  
16:30:13 17 Q. Okay. Thank you.

16:30:15 18 Turning towards Voxer's asserted claims of its  
16:30:20 19 patents, let's begin with the '270 asserted claims. How are  
16:30:25 20 the hallmarks of Voxer's technology reflected in its patent  
16:30:32 21 claims?

16:30:33 22 A. And, again, we'll be going through this in more detail,  
16:30:36 23 but I wanted to, sort of as a starting point, show that these  
16:30:39 24 hallmarks are related to the claim language of various claims.

16:30:43 25 So in particular for the '270, there are aspects that

16:30:46 1 you can see, you know, related to real-time media. So it talks  
16:30:51 2 here about being able to -- you know, people on the receiving  
16:30:54 3 side receiving the data while it's still being sent by the  
16:30:58 4 sender side. That deals with the real-time media.

16:31:01 5           You know, no end-to-end connection. Again, there's  
16:31:05 6 part of the claim language that specifically talks about having  
16:31:08 7 no end-to-end connection. Ascertaining location, there's  
16:31:12 8 language related in this case specifically to ascertaining  
16:31:16 9 locations, and so on.

16:31:19 10 Q. Let's turn to the '557 patents. How are Voxer's hallmarks  
16:31:26 11 reflected in the asserted claims of the '557 patents?

16:31:31 12 A. And, again, this is more just an overview slide to show  
16:31:34 13 that these sorts of hallmarks exist in the claims. Again, we  
16:31:41 14 see real-time media so that the rendering, that is, the showing  
16:31:46 15 of the video, occurs while the message, if you look at number  
16:31:52 16 one down there, the message is being created and transmitted.  
16:31:56 17 So that's an example of real time. There are claim elements  
16:31:59 18 that use the exact phrasing of real time.

16:32:00 19           No end-to-end connection, again, in the number down  
16:32:04 20 at the bottom, again, it specifically says "without having to  
16:32:07 21 establish an end-to-end connection," and so on for other  
16:32:10 22 aspects of the claim language.

16:32:12 23 Q. Now, the '557 patent, the claims refer to a video message  
16:32:19 24 service infrastructure and to video messages. What is your  
16:32:22 25 understanding of that term?

16:32:23 1 A. Right. So we saw an earlier testimony that the patent  
16:32:29 2 itself discusses what a message is. You know, it's an  
16:32:32 3 individual unit of communication from one user to another. It  
16:32:36 4 talks about, you know, the ability to have this notion of,  
16:32:39 5 like, conversations and so on.

16:32:41 6 So when we talk about a video message service  
16:32:43 7 infrastructure, again, this is talking about an infrastructure  
16:32:49 8 that allows the passing of video messages. But it's not just  
16:32:54 9 like -- you know, it's not, for instance, like the broadcast TV  
16:32:57 10 that you get on your television set. The idea is that this  
16:33:01 11 goes beyond that, and that's reflected in the "phrase video  
16:33:04 12 message" and, in particular, "video message service  
16:33:07 13 infrastructure." That at least allows, architecturally, you  
16:33:14 14 know, for this sort of interactivity or users to send from one  
16:33:16 15 to another.

16:33:17 16 Q. And have you included a definition of the term "message"  
16:33:20 17 here, and where is that from?

16:33:23 18 A. Right. As we saw earlier, this is, you know, "message" is  
16:33:26 19 explicitly described or defined in the '557 patent as an  
16:33:32 20 individual unit of communication from one user to another.

16:33:36 21 Q. Let's turn to the Facebook products at issue in this case.  
16:33:47 22 What Facebook products did you evaluate with regard to  
16:33:50 23 infringement of the two Voxer patents?

16:33:52 24 A. We will be discussing Facebook Live and Instagram Live.

16:33:55 25 Q. What is Facebook Live?

16:33:57 1 A. So Facebook Live is, you know, a part of the larger  
16:34:04 2 Facebook social network. Facebook Live in particular refers to  
16:34:08 3 the technology that they use to do live streaming. So Facebook  
16:34:13 4 Live allows user to, again, record themselves on their devices  
16:34:18 5 and make it available as a live stream to other users.

16:34:23 6 Q. What devices does Facebook Live work on?

16:34:27 7 A. Facebook Live works on a variety of devices. It works on  
16:34:32 8 iOS devices, in particular, iPhones. It works on Android  
16:34:37 9 devices, in particular, Android phones. You know, it also  
16:34:40 10 works -- you can, you know, watch videos off the Facebook  
16:34:45 11 Live -- or sorry -- off of Facebook web page. And, similarly,  
16:34:49 12 you can construct videos even off the Facebook -- a Facebook  
16:34:55 13 web page.

16:34:55 14 Q. And what is Instagram Live?

16:34:58 15 A. So Instagram Live, you know, this is a product, you know,  
16:35:05 16 similar to a social network. It's meant to share messages and,  
16:35:09 17 in particular, videos on the live version or aspect. There are  
16:35:15 18 aspects of it that are very much similar to the Facebook  
16:35:18 19 product, but there are also differences.

16:35:21 20 For the most part, they are very similar with regard  
16:35:27 21 to many of the infringement issues I'll discuss, including  
16:35:29 22 their architecture, which is a shared architecture. But there  
16:35:37 23 are some differences in things like the user interface, like  
16:35:38 24 what the user can do or how the user sets things up or what's  
16:35:41 25 available to them. And I'll discuss those, you know,

16:35:45 1 particular differences when they're relevant to the  
16:35:48 2 infringement discussion.

16:35:50 3 Q. And on which particular devices is Instagram Live  
16:35:53 4 available?

16:35:54 5 A. Okay. Instagram Live would be available on, you know,  
16:35:59 6 your iOS devices, iOS phones, Android devices, Android phones.  
16:36:06 7 You can also watch, like, Instagram Live videos on the web, but  
16:36:11 8 the Instagram web page isn't set up so that you can create  
16:36:15 9 videos.

16:36:20 10 Q. Now, have you prepared a demonstrative of the end user  
16:36:23 11 experience for Facebook Live?

16:36:24 12 A. Yeah. Before we get into the claims, I think it's very  
16:36:28 13 useful to have an understanding of how the products work with  
16:36:33 14 regard to, you know, the Facebook Live, in particular, how it  
16:36:38 15 relates to much of the discussion we'll have about the claims.  
16:36:41 16 So I just want to present a bit about the user interface so  
16:36:46 17 that you have an idea of what that interaction looks like from  
16:36:49 18 the point of view, in particular, of a sender.

16:36:55 19 Q. Great. You said from the perspective of a sender. What  
16:36:59 20 does that refer to in this slide?

16:37:01 21 A. Right. So a sender is someone who is going to create and  
16:37:04 22 post a video. And so maybe we can just start, but where that  
16:37:08 23 starts, you know, a user on Facebook has something called a  
16:37:13 24 "feed," right? And a feed is where, you know, the information  
16:37:18 25 Facebook has for you is posted, so you'll see users can post,



16:37:23 1 like, like little snippet stories, they can post videos, they  
16:37:27 2 can post pictures. You know, Facebook's ads that they put onto  
16:37:35 3 the system show up on the feed and so on. So the feed is sort  
16:37:38 4 of like your starting point where, as a user, you sort of see  
16:37:42 5 what Facebook is giving you.

16:37:47 6 Q. And if you want to start a Facebook Live transmission,  
16:37:50 7 where do you go from the news feed?

16:37:54 8 A. Right, from feed you can say, well, I want to start a  
16:37:56 9 post. I want to create something I can distribute onto  
16:38:00 10 Facebook. And, again, there are different types of posts you  
16:38:03 11 could put. You could put up things like photos and so on. But  
16:38:07 12 one of the things that you can create when you do a post is a  
16:38:11 13 live video. And if you look at the user interface, I'm just  
16:38:15 14 speaking of user interfaces. I'm just going to try this right  
16:38:20 15 there. You can see the live video on the user interface.

16:38:28 16 Q. Now, how does a Facebook user decide who is going to get  
16:38:32 17 their video -- their live video?

16:38:34 18 A. Okay. So part of the user interface in Facebook Live is  
16:38:38 19 that you can choose the audience, right? So you can say who is  
16:38:42 20 going to be the audience of, in particular, this video that I'm  
16:38:46 21 creating. So there are variety of choices that you can have.

16:38:51 22 So you can send it to -- or you can -- yeah. You can  
16:38:55 23 send it to your friends, right? So your friends -- so friends  
16:39:00 24 are something that you set up on Facebook. You can say, oh,  
16:39:06 25 I'm going to connect with someone. I'm going to list them as

16:39:08 1 one of my friends, right? That's sort of a special grouping  
16:39:11 2 that Facebook has available.

16:39:15 3 But maybe you don't want to send a video you're  
16:39:18 4 creating to all your friends, right? Maybe this isn't a video  
16:39:22 5 I want to share with everyone, just with some people. So you  
16:39:25 6 can also share it with specific friends. That's one of the  
16:39:29 7 options. There's one for "friends except," right? So you can  
16:39:32 8 say I'm going to take off some of my friends. You know, I  
16:39:36 9 don't want this -- my mom to see this video or something like  
16:39:40 10 that.

16:39:41 11 You know, there's also an option to send it to  
16:39:44 12 public, which just sort of means that it's available  
16:39:48 13 essentially to all of Facebook, and through various ways, might  
16:39:54 14 even be accessible to people off of Facebook.

16:39:56 15 You can see there is lists. You can create other --  
16:39:59 16 other lists of possible people you want to send to. You can  
16:40:03 17 sort of construct your own list. There are other parts of the  
16:40:06 18 interface that may let you also share it to specific pages or  
16:40:11 19 groups. There are certain groups you can send it to as well.

16:40:16 20 Q. And what happens after this selection is made?

16:40:19 21 A. All right. So you can go to -- you know, after you've  
16:40:23 22 decided who you might send it to, it will show you a screen  
16:40:26 23 where it's ready to -- you know, where you're ready to record.  
16:40:31 24 So you would hit this recording button by hitting "go live,"  
16:40:36 25 and then your device will start recording and start shipping

16:40:40 1 the video out to others or, in particular, to the Facebook  
16:40:45 2 system to distribute to others.

16:40:47 3 Q. How does a stream end?

16:40:49 4 A. So, well, this I think actually shows the streaming. This  
16:40:56 5 is very boring video, I think. Sorry can you go back one.  
16:41:01 6 This is very boring video of a pen. But, you know, there are  
16:41:05 7 various ways that you can introduce or get interactivity  
16:41:09 8 through the Facebook system. One of them you can see at the  
16:41:12 9 bottom, it says "comments will appear here." One of the ways  
16:41:16 10 that you can have interactivity is that people can comment on  
16:41:20 11 your video, and you'll see those comments.

16:41:22 12 So, again, it's a system that allows, because you're  
16:41:28 13 going in real time, you can comment on things as they are  
16:41:32 14 happening or you could comment later after it's already  
16:41:36 15 finished.

16:41:37 16 Q. And I jumped ahead a little. My apologies. And what  
16:41:44 17 happens when a stream ends?

16:41:45 18 A. So once you end the stream, you can push a button and say,  
16:41:48 19 like, I'm done and end the stream. You know, your broadcast  
16:41:52 20 ends, and you have the option to, you know, post the stream  
16:41:57 21 itself, that is, you can convert and say, okay, I want the  
16:42:00 22 stream to be saved and made available to people later.

16:42:05 23 So this is -- you know, there are different  
16:42:08 24 terminology for it. In Facebook they call it for instance a  
16:42:12 25 "was live video." So the idea is that it was a live video, now

16:42:17 1 it's not. So it's "was live." These are also sometimes called  
16:42:21 2 video-on-demand type videos. Someone can come ask for them  
16:42:26 3 later. So you have the ability to say, okay, I would like this  
16:42:29 4 to made available to people later.

16:42:32 5 Q. And where are "was live" videos made available to users?

16:42:37 6 A. Right. So they're stored within the Facebook system, and  
16:42:42 7 users can -- again, they may see them on their feed. There are  
16:42:46 8 variety of ways they can access them. They could say, oh, let  
16:42:50 9 me find recent videos from this user. There are a variety of  
16:42:53 10 interfaces that they might use on Facebook to find that video.

16:42:57 11 Q. Now, we've focused so far on the sender's perspective for  
16:43:02 12 Facebook Live. I'd like to turn with you to the recipient's  
16:43:06 13 perspective. What does Facebook Live look like from a  
16:43:10 14 recipient's point of view?

16:43:13 15 A. So, again, one of the ways that you can -- you know, that  
16:43:16 16 a recipient will see a live video is it can show up in their  
16:43:21 17 feed. So some videos that they may start to play the first few  
16:43:26 18 seconds automatically so that you can see what they're doing.  
16:43:29 19 Others may just say, you know, here's this live video.

16:43:33 20 Again, there are other ways to access live videos  
16:43:36 21 besides the feed. You know, there are pages that have live  
16:43:39 22 videos or groups and so on. I'll focus on feed because that's  
16:43:43 23 one of the most natural interactions in Facebook. But you may  
16:43:48 24 see, you know, there's a live video on your feed and then you  
16:43:51 25 say, okay, yeah, let's watch. And so you, you know, click or

16:43:55 1 just push on the screen and then the video will appear.

16:44:00 2 And then, as the video appears, the video will be on  
16:44:04 3 or while it's going on, you can see here also you can write a  
16:44:09 4 comment, you'll see some of the comments that are going on.  
16:44:12 5 Again, it provides this the, sort of, interactivity.

16:44:20 6 Q. Thank you. Let's turn over to Instagram Live, and let's  
16:44:25 7 start again from the sender's perspective of sending Instagram  
16:44:28 8 Live video. What's shown here?

16:44:33 9 A. So there's a similar set of shots that I have, again,  
16:44:37 10 showing the user interface. And, again, this is a place where  
16:44:43 11 I can show some of the similarities and the differences in  
16:44:47 12 terms of the user interface. But, at a high level, it works in  
16:44:51 13 a very similar fashion.

16:44:53 14 So, in particular, for Instagram, again, users have a  
16:44:56 15 feed, and feeds contain, you know, what they call stories or,  
16:45:01 16 again, we might also call posts. You know, those are things  
16:45:05 17 that your friends or people that you follow are showing on  
16:45:11 18 Instagram.

16:45:13 19 Q. Can an Instagram user also specify who is going to get the  
16:45:17 20 live video?

16:45:18 21 A. Yeah. There are multiple, different ways -- and I'll  
16:45:23 22 discuss this in more depth again as we go forward -- of  
16:45:27 23 Instagram being able to determine who will -- who can see the  
16:45:31 24 video. So one of the ways is there is a privacy setting. So  
16:45:38 25 you can choose the privacy setting for your account. The

16:45:42 1 privacy setting here is just to make it either private or  
16:45:44 2 public.

16:45:45 3           So if you make it a private account, that means that  
16:45:48 4 only the people who are following you, that is, like only the  
16:45:52 5 people who you're connected to, will be able to see the things  
16:45:56 6 that you post or, in particular, the video -- the live videos  
16:46:00 7 that you post.

16:46:02 8           You can also say, no, I don't need this to be  
16:46:06 9 private. I'm happy to have my account be public. And then,  
16:46:09 10 you know, essentially, any Instagram user has access to your  
16:46:14 11 videos.

16:46:15 12 Q.   And on the option of sending to followers, does a user  
16:46:19 13 have control over his or her followers?

16:46:22 14 A.   Yes. A user would have control over his or her followers.  
16:46:27 15 So, for instance, you would have to accept someone to have them  
16:46:28 16 be one of your followers. You can also block followers in  
16:46:33 17 various ways through the user interface.

16:46:35 18 Q.   And who receives the Instagram Live video if the sender's  
16:46:39 19 account is set to public?

16:46:41 20 A.   Anyone will receive it.

16:46:47 21 Q.   How does a user then start an Instagram Live video?

16:46:51 22 A.   So, again, there's a part of the user interface you can go  
16:46:58 23 to, and you see down here on the bottom, again, you're creating  
16:47:01 24 a new story, and you can set it to live. And then the little  
16:47:07 25 button there on the bottom, you hit the button and then you're

16:47:09 1 starting your live video. And, again, this is a very boring  
16:47:12 2 video of a pen, you know, but that would be something that you  
16:47:16 3 could record and start sending out to people.

16:47:20 4 Q. Okay. And what happens when you select this live option?

16:47:23 5 A. Again, it just starts recording and sending out. And you  
16:47:27 6 can see here in the interface there's both various ways that  
16:47:33 7 you can see a notification happening and various ways that, you  
16:47:39 8 know, you can see interaction happening.

16:47:42 9 So one of the -- you know, you see here the interface  
16:47:46 10 on the bottom, it says we're telling you followers that you're  
16:47:49 11 starting a live video, and so your followers would be informed  
16:47:53 12 of your live video. Again, very similar to Facebook, there's  
16:47:59 13 the ability to do comments. So you can have comments back and  
16:48:03 14 forth.

16:48:03 15 You know, there's also an option here -- and there's,  
16:48:07 16 again, sort of similar things or ideas in Facebook. But, you  
16:48:14 17 know, in particular here, you can add a guest to be in your  
16:48:17 18 live video. So you can -- what that does is, if you set  
16:48:22 19 someone up to be a guest, it actually shows the two of you  
16:48:25 20 together or both of your videos.

16:48:28 21 Q. Thank you. And I see a triangle icon in the lower, right.  
16:48:32 22 What does that button do?

16:48:34 23 A. Oh, okay. So, yeah, if you look at the very lower right,  
16:48:39 24 I could -- let me see if I can use my other toy here. Right  
16:48:45 25 down there at the bottom there, there is a pair of triangles.

16:48:51 1 I think it's actually supposed to be a paper airplane from what  
16:48:55 2 I understand. So this is called Direct Messaging. So you can  
16:49:02 3 specifically say, like, I want a notification sent to some of  
16:49:07 4 my followers, you know, because I really want them to know that  
16:49:11 5 this video is there or I want to encourage them to hop on this  
16:49:15 6 video.

16:49:15 7 Q. Could you please explain how Instagram Direct Messaging  
16:49:20 8 operates?

16:49:21 9 A. So when a direct message comes up, you know, you would get  
16:49:25 10 a list of your followers and you can sort of pick out one or  
16:49:28 11 more of them that you want, say, notify, and they'll receive a  
16:49:34 12 notification saying, like, yep, okay, this person is sending a  
16:49:36 13 video.

16:49:37 14 Q. Okay. Once a sender is done sending a live video in  
16:49:41 15 Instagram, what happens from there?

16:49:42 16 A. So, once again, you can end the video, and once the video  
16:49:46 17 ends, you have an option to -- to share it, to make it  
16:49:51 18 available later. So, once again, in that case it would be  
16:49:59 19 saved in its final form in a way so that people can access it  
16:50:02 20 later. So it turns it into a video on demand.

16:50:06 21 Q. Thank you. And, briefly, can you take us through the  
16:50:14 22 recipient's perspective of someone receiving an Instagram Live  
16:50:18 23 video? Can you take us through that perspective?

16:50:21 24 A. Yeah. Again, you would see it either in your feed or  
16:50:24 25 through some form of notification. You would accept or



16:50:27 1 click -- you know, push something and say, yep, I'll see the  
16:50:30 2 video and it will pop up on your screen. And, again, you can  
16:50:34 3 then see the video, and there are various ways of interacting.  
16:50:38 4 You can comment. Instagram has this notion of badges, so like  
16:50:48 5 you send people badges that you've bought. And that I think is  
16:50:51 6 one of their newer systems for arranging for people who are  
16:50:55 7 creating live videos to essentially be remunerated.

16:50:59 8 Q. And, to confirm, Instagram Live videos, can they be  
16:51:02 9 received in the feed?

16:51:04 10 A. Yes. One of the ways that you would get them is they  
16:51:07 11 would show up in your feed, like, here's a live video.

16:51:10 12 Q. And for the clarity of the record, is the feed also  
16:51:13 13 referred to as the "news feed" in both Facebook and Instagram?

16:51:17 14 A. Yes. At least at times that's what it's referred to.

16:51:20 15 Q. Now, we've been focusing on the user's perspective for  
16:51:23 16 Facebook Live and Instagram Live. I'd like to move under the  
16:51:27 17 hood, so to speak. Are these two systems, are they implemented  
16:51:31 18 using different systems?

16:51:33 19 A. No. They share the same fundamental architecture.

16:51:38 20 There's a few places where my understanding is they use, you  
16:51:42 21 know, different servers for some tasks. Like if they're  
16:51:45 22 keeping track of, you know, who you've identified to watch the  
16:51:51 23 video, that those might be kept in different machines. But  
16:51:55 24 this part that I'm showing, like the underlying architectural,  
16:51:58 25 the step-by-step, they really share the same architecture and

16:52:03 1 they work and function in the same way.

16:52:05 2 Q. Okay. And what is the diagram?

16:52:10 3 A. So this is a diagram from one of the Facebook documents  
16:52:16 4 that I examined in the course of the case. This is their --  
16:52:20 5 you know, a description of what they call the media-streaming  
16:52:24 6 pipeline. And it sort of shows the steps, shows the framework,  
16:52:29 7 that's being used, you know, what I would call a description of  
16:52:32 8 the architecture, that's used to manage and process videos.

16:52:38 9 Q. And, for the record, this diagram is from Exhibit P-14.

16:52:43 10 Did you create this diagram?

16:52:45 11 A. No. To be clear, again, this came from a Facebook  
16:52:49 12 document, and I'm just using it to help in my explanation.

16:52:56 13 Q. Can you please walk the jury through what happens under  
16:52:59 14 the hood when a user starts to record a Facebook or Instagram  
16:53:03 15 live video?

16:53:04 16 A. Sure. So in -- in this picture, in this slide, things  
16:53:10 17 start with the client. Okay. So the client is all the way on  
16:53:14 18 the left over there. So the client -- where it says the client  
16:53:19 19 here, that's the device that's creating the video. So you can  
16:53:23 20 think of that as like that's my phone, and I'm starting to  
16:53:27 21 record myself. That would be the client.

16:53:31 22 Q. Okay. What happens next in the flow from sender to  
16:53:35 23 recipient?

16:53:35 24 A. Okay. So from the client it goes to the intake system of  
16:53:42 25 Facebook. So the first thing it has to do is Facebook has to

16:53:45 1 essentially have some sort of intake process for the video.  
16:53:49 2 That happens at -- they call that part of the system right  
16:53:52 3 there "EdgeTee." So you can see we have the arrow going from  
16:53:57 4 client to the EdgeTee. The A, slash, V my understanding is  
16:54:00 5 that stands for audio/video.

16:54:03 6 There's some stuff underneath here, FBVP and RTMP.  
16:54:10 7 Those refer to what are called network protocols. So that's  
16:54:15 8 sort of the, you know, network language or the network system,  
16:54:21 9 you know, how to format the data so that you can send it from  
16:54:25 10 one to the other over the network.

16:54:27 11 FBVP should be sort of the Facebook Video Protocol.  
16:54:35 12 That's something that they developed inside -- inside Facebook,  
16:54:40 13 and, you know, someone will correct me or my lawyer will  
16:54:43 14 correct me if I mess up an acronym. There are so many acronyms  
16:54:49 15 in the case. But Facebook Video Protocol. RTMP is Real-time  
16:54:53 16 Messaging Protocol. These are both protocols that are used to  
16:54:57 17 transfer information from the client to the EdgeTee.

16:55:00 18 Q. What is a protocol in this situation? What does that  
16:55:03 19 mean?

16:55:03 20 A. Yeah. So you can think of a protocol as sort of rules or  
16:55:07 21 a language that is used to encode information so that both  
16:55:11 22 sides sort of know what they're getting, so they know what the  
16:55:15 23 setup is.

16:55:15 24 Q. Okay. And what happens in the next step of sending a  
16:55:19 25 Facebook Live or Instagram Live video?

16:55:22 1 A. Okay. So EdgeTee goes to what they've marked here as  
16:55:29 2 FBLS. That's the Facebook Live service or I also will refer to  
16:55:35 3 as Facebook Live servers. So this is like, you know, sort of  
16:55:39 4 the meat of where the Facebook processing, I guess, happens.  
16:55:46 5 Like, after the intake stage, this is where they start to  
16:55:50 6 manage and process the video and get it ready for consumption  
16:55:54 7 for the people on the other side.

16:55:57 8 Q. Okay. And what happens next in this flow?

16:56:02 9 A. All right. So one of the things the Facebook Live servers  
16:56:07 10 do, or the Facebook Live service does, is send things over to  
16:56:11 11 up here we see something called the encoding service. Okay.  
16:56:14 12 So the Facebook will get the video in some sort of format,  
16:56:18 13 whatever format you set it up. Facebook wants to have it in  
16:56:22 14 its own formats, or, in particular, it wants to, you, know have  
16:56:27 15 some sort of standard format.

16:56:29 16 And it also, as we've talked about or will come into  
16:56:33 17 issue with the claims, it will want to create different  
16:56:37 18 versions of the video, these sort of multiple versions designed  
16:56:42 19 for different possible devices on different network conditions  
16:56:45 20 or different network settings.

16:56:47 21 So this is called the encoding service. That process  
16:56:50 22 is, again, called transcoding. And, you know, so Facebook  
16:56:54 23 takes it and puts it into, you know, these variety of formats.

16:57:00 24 Q. And what happens next?

16:57:03 25 A. Right. So after the encoding stage, the encoded videos

16:57:12 1 are sent to what over here we see is called CDN. That stands  
16:57:17 2 for content delivery network. So a content delivery network is  
16:57:24 3 generally a large collection of servers that's designed  
16:57:28 4 specifically for the task of getting the video to the end  
16:57:31 5 users. So it handles the task of connecting to the end users  
16:57:37 6 who are going to get the video.

16:57:38 7 And, you know, as part of this sort of process,  
16:57:41 8 somewhere in here you can see also down here on the bottom, you  
16:57:45 9 know, these videos will get stored. So down here it says "oil  
16:57:54 10 cache." The particular thing when you see one of these  
16:57:57 11 cylinder type things in an architecture diagram, the standard  
16:58:01 12 for that is that means storage. A cylinder is used to mean  
16:58:05 13 storage. So that's memory. That's somewhere where things are  
16:58:08 14 going to be stored.

16:58:09 15 Q. And to wrap up this flow, what is the final step in  
16:58:13 16 sending to this player?

16:58:15 17 A. Right. So we see here selected video encoding, and that's  
16:58:19 18 going to go to, you know, the other side, which is called the  
16:58:23 19 player. It's called the player in this slide.

16:58:27 20 And there's two more things I want to quickly add.  
16:58:30 21 First of all, I want to apologize. At times I'll also talk  
16:58:32 22 about "client," and it's, like, the client usually refers or  
16:58:38 23 often refers to, you know, sort of the program on your phone.  
16:58:41 24 It's also called an application. So here it says player.  
16:58:45 25 Sometimes I might use "client" to mean, yeah, and I'm meaning

16:58:49 1 the player. That's also a client.

16:58:51 2 The other thing I guess I want to point out is down  
16:58:54 3 here again we see another protocol that's used. That's called  
16:58:59 4 DASH. DASH stands for dynamic adaptive streaming over HTTP.  
16:59:06 5 Okay. So that's another protocol that's used in particular to  
16:59:11 6 send information, and frequently for streaming video  
16:59:15 7 information, in order to get video information to users in a  
16:59:20 8 timely and effective fashion. So that will also come up later  
16:59:24 9 in our discussions.

16:59:25 10 Q. So just the player here refers to what?

16:59:30 11 A. Right. The player here refers to the device that's going  
16:59:33 12 to play the video, the end user of it wanting to watch.

16:59:37 13 MR. STAKE: And I'm mindful of the hour. This would  
16:59:41 14 be a good place to pick up tomorrow, I believe.

16:59:44 15 THE COURT: It appears that way. Ladies and  
16:59:45 16 gentlemen, we'll take our evening recess at this time. Please  
16:59:48 17 remember the instructions the court has previously given you:

16:59:52 18 Do not talk about this case among yourselves or with  
16:59:55 19 anyone else. Do not read any publications that may contain any  
17:00:01 20 information about this case. Do not listen to or observe any  
17:00:03 21 radio or television news broadcasts that may have information  
17:00:06 22 about this case. Do not attempt to find out anything about any  
17:00:10 23 of the parties or the issues or anything about this case  
17:00:13 24 through the means of any electronic device, and do not transmit  
17:00:18 25 any information about this case to anyone through any

17:00:21 1 electronic device.

17:00:22 2 Please drive carefully. Be back in your jury room a  
17:00:25 3 little bit before nine o'clock.

17:00:59 4 (Jury recessed)

17:00:59 5 THE COURT: Everybody good for the evening?

17:01:06 6 MR. VAN NEST: Your Honor?

17:01:06 7 THE COURT: I knew it was too good to be true.

17:01:11 8 MR. VAN NEST: Your Honor, following up on our  
17:01:13 9 discussion earlier about Dr. Mitzenmacher, we'd like leave to  
17:01:17 10 file a bench brief concerning prosecution waiver, IPR waiver,  
17:01:26 11 estoppel. They should be estopped from asserting positions  
17:01:31 12 inconsistent with that what they asserted in the IPR.

17:01:37 13 THE COURT: Has the plaintiff had an opportunity to  
17:01:40 14 see the --

17:01:40 15 MR. VAN NEST: No.

17:01:40 16 THE COURT: All right. Then what I would like for  
17:01:42 17 you to do is hang on to it. When can you give them a copy, and  
17:01:47 18 when can you have a response to that?

17:01:49 19 MR. POWELL: Two days, Your Honor, I believe.

17:01:57 20 THE COURT: Yeah. I'd like to get something by the  
17:02:00 21 close of business tomorrow. It may involve needing to call the  
17:02:04 22 witness back. But if I'm going to get things during the middle  
17:02:07 23 of trial, I'm not going to take them home and do them tonight.

17:02:14 24 MR. POWELL: And, Your Honor, we only saw this  
17:02:14 25 argument a couple of days ago, and so we aren't even sure of

17:02:16 1 the exact argument that's going to be made.

17:02:18 2 THE COURT: Well, take a look at it. We'll take it  
17:02:20 3 up before I bring the jury back in the morning and talk about  
17:02:23 4 it a little bit.

17:02:23 5 MR. VAN NEST: Thank you, Your Honor.

17:02:24 6 All right. We done now?

17:02:28 7 MR. STAKE: Yes, Your Honor.

17:02:30 8 THE COURT: What?

17:02:31 9 MR. STONE: We're done.

17:02:33 10 MR. VAN NEST: And we are as well.

17:02:34 11 THE COURT: All right. We'll be in recess until  
17:02:36 12 nine o'clock.

18:00:00 13 (End of transcript)

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1 UNITED STATES DISTRICT COURT )

2 WESTERN DISTRICT OF TEXAS )

3 I, Arlinda Rodriguez, Official Court Reporter, United  
4 States District Court, Western District of Texas, do certify  
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7 I certify that the transcript fees and format comply with  
8 those prescribed by the Court and Judicial Conference of the  
9 United States.

10 WITNESS MY OFFICIAL HAND this the 18th day of  
11 September 2022.

12

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